Supreme Court, U.S.
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In the Supreme Court of the United States

Ariel King,

Petitioner

v.

Michael Pfeiffer,

Respondent

On Petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Virginia

PETITION FOR WRIT OF CERTIORARI

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November 16, 2009

QUESTIONS PRESENTED

Since June 2008, *pro-se* litigant Dr. King's parental rights -- including her right of contact with her now six-year-old daughter -- were effectively terminated by a "final" "custody order" by the Juvenile and Domestic Relations (JDR) Court in Arlington, Virginia -- a court "not of record." The JDR Court entered a series of orders making an appellate review, including a statutorily provided *de novo* review by the Circuit Court, inaccessible.

1) Is it a denial of *pro-se* litigant parent's due process and equal protection rights to be denied substantive review, including her challenge to the state's subject matter jurisdiction, where that state's not of record court effectively terminated that parent's parental rights and made *de novo* appeal of right effectively unavailable to her?

2) Is it a denial of a six-year-old German-American child's rights, including the right to due process, equal protection and free speech, for a state to terminate all contact with her mother, without any evidentiary record or substantive *de novo* appellate review of right?

3) Is it a denial of the child's basic human rights, as set forth under the United Nations Convention on the Rights of the Child, where the child is a German citizen, and the child is barred from any contact with her mother, without record or substantive *de novo* appellate review of right?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the Supreme Court of the Commonwealth of Virginia.

The Petitioner here and Appellant below is Dr. Ariel Rosita King

The Respondent here and Appellee below is Dr. Michael Herbert Pfeiffer

CORPORATE DISCLOSURES

Pursuant to Rule 29.6, Petitioner states:

None

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The August 18, 2009 Opinion of the Supreme Court of the Commonwealth of Virginia is unreported and is reprinted in the appendix at Pet. App 21. The opinions of the Court of Appeals of Virginia are unreported and are reprinted in the Appendix at Pet. App 18, and Pet. App. 20. The opinions of the Arlington County Circuit Court are unreported and reprinted in the Appendix at Pet. App 15-16. The opinions of the Arlington County Juvenile and Domestic Relations Court are unreported and reprinted in the Appendix at Pet. App 1-14. A related opinion of the Supreme Court denying mandamus is reprinted at Pet. App. 17

JURISDICTION

The Supreme Court of the Commonwealth of Virginia issued its opinion on August 18, 2009. This Court has jurisdiction under 28 USC §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the Fourteenth Amendment of the US Constitution and various sections of the Virginia Code, including *VA Code §16.1-106 Appeals from courts not of record in civil cases*; *VA Code §16.1-113; How appeals tried; VA Code §20-124.2; Court-ordered custody and visitation arrangements*; and the Virginia UCCJEA, *VA Code § 20-146.1, et. seq*. The pertinent provisions are reproduced at Pet. App. 21-27.

STATEMENT OF THE CASE

The not of record Juvenile and Domestic Relations (JDR) Court of Arlington County was the Court of the first instance in Virginia. It was also the court that effectively terminated the parental rights of Petitioner Dr. King from her then five-year-old child, without any substantive or procedural review of right by a higher court. The issues of denial of due process and equal protection were first raised in Motions filed with the JDR Court, and raised in each brief filed in the Court of Appeals of Virginia and the Supreme Court of the Commonwealth of Virginia. The threshold challenge to whether any Virginia Court had subject matter jurisdiction was raised in Motions filed in the not of record JDR Court, and in each brief filed on appeal.

1. The "Not of Record" JDR Court Effectively Terminated The Mother's Parental Rights and Criminalized Her for Caring for Her Daughter

Dr. King is a US citizen who lived in Europe, but was convinced to return to the US to enable Dr. Pfeiffer, a German citizen, to complete his neurology medical studies in the US in September 2000. In June 2007, Dr. Pfeiffer took his possessions and left his family in Maryland for a one bedroom rental apartment in Washington DC. At that point, the family had lived in Maryland for over eight months.

On July 6, 2007, Dr. Pfeiffer appeared uninvited at a reception hosted by Dr. King at the Zambian Embassy in Washington DC. He was threatening and physically aggressive towards his

wife and daughter in front of many witnesses at an embassy function. The police escorted Dr. King and her daughter out of Washington DC and told her to seek a Temporary Protection Order (TPO). The TPO was issued but not renewed because the incident occurred at an international embassy outside of the DC Court's jurisdiction.

Cut off from all financial resources, Dr. King and her four-year old daughter stayed with friends until some form of emergency temporary housing could be secured without a deposit. Dr. King found such housing in Arlington Virginia, and moved into an Arlington rental apartment on July 10, 2007.

The Father Initially Sued for Divorce and Custody in Washington DC, But the Case was Dismissed for Lack of Subject Matter Jurisdiction: Dr. Pfeiffer initially tried to file for divorce and emergency custody against Dr. King on July 20, 2007 in Washington DC Superior Court. That case was dismissed because neither Dr. King or her child lived in Washington DC, the minimum statutory period of six months required for subject matter jurisdiction by a state court for having "home state" jurisdiction in a custody case under the DC Uniform Child Custody and Juvenile Enforcement Act (UCCJEA) (see, discussion *infra*). The DC Court specifically refused to resolve the question as to whether subject jurisdiction for child custody lied in Maryland (where they had lived for over six months), or Virginia (where Dr. King had secured emergency temporary housing only days before the DC hearing).

The Father Filed for Only Full Custody In the Not of Record JDR Court in Arlington: On August 9, 2007, only twenty-nine days after Dr King and her daughter secured emergency temporary housing, Dr. Pfeiffer filed a new Petition to take full custody in the Arlington JDR Court. The JDR court is not of record and is the most inferior court of the Commonwealth. Each litigant in JDR Court is entitled by statute to *de novo* review in the Arlington Circuit Court. VA Code §16.1-106. *Appeals from courts not of record in civil cases.* Reprinted at Pet. App. 21.

Dr. Pfeiffer sought to take custody away from Dr. King, who was the child's primary caregiver up until that point in her life. An unscheduled hearing was held prematurely on September 5, 2007. Instead of hearing Dr. King's motion for continuance of the upcoming hearing, the JDR court without waiting for a written answer addressing the question of jurisdiction or calling witnesses entered an interim order maintaining Dr. King's physical custody. The JDR Court also required Dr. Pfeifer to deposit the child's German passport with the Court as a precondition to his visitation.

In October 2007, the mother and child secured permanent housing and moved back to Maryland to be near the child's school. On November 8, 2007, a home study ordered by the Virginia JDR Court recommended as follows:

> *RECOMMENDATION: It is respectfully recommended that the parents, Dr. Ariel King and Dr. Michael Pfeiffer, share joint custody of their daughter, Ariana-Leilani, with physical*

custody being given to Dr. Ariel King.
- *Custody Investigation*, Arlington JDR Court, Nov. 8, 2007

The Mother Filed Motions to Dismiss Based on Lack of Subject Matter Jurisdiction: Despite the favorable JDR Custody Investigation, legal research revealed that Virginia did not have subject matter jurisdiction, as a matter of law. Dr. King, through counsel then filed motions to dismiss the Virginia case on November 20, 2007 and the second on November 30, 2007. Dr. King's Motions explained that Virginia did not have subject matter jurisdiction[1] under the Virginia UCCJEA, because neither the child or either of her parents had been living in Virginia six months prior to the commencement of the proceeding in Virginia, as required by the UCCJEA.[2]

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[1] "Subject matter jurisdiction' refers to the power granted to the courts by constitution or statute to hear specified classes of cases." *Moore v. Commonwealth*, 527 S.E.2d 415, 417 (2000). It cannot be waived, and "any judgment rendered without it is *void ab initio*." *Humphreys v. Commonwealth*, 43 S.E.2d 890, 893 (1947)). "Lack of subject matter jurisdiction 'may be raised at any time, in any manner, before any court, or by the court itself.'" (*Humphreys* at 893). For Federal Law, e.g. *Steel v. Citizens for Better Environment, 523 U.S. 83, 118 S. Ct. 1003 (1998); FRCP 12(h)(3)*

[2] *VA Code §20-146.1, et. seq.* Reprinted at Pet. App. 24-27. The UCCJEA, which is adopted in various forms in most states, uses a six-month "window" to determine a child's home state. A state has home-state jurisdiction if it was the home state on the day the custody action was filed *or* on any day during the six

Instead they had been living for six months in Maryland within the six month period prior to Dr. Pfeiffer's Virginia filing, thus making Maryland the child's "home state" for establishing subject matter jurisdiction under the UCCJEA at that time. Dr. King also argued, in the alternative, even assuming Virginia had original subject matter jurisdiction, Virginia lost continuing exclusive jurisdiction three months later, when Dr. King and the child returned to Maryland and no party to the proceedings remained living in Virginia.[3]

The Not of Record JDR Court Denied The Mother's Motion to Dismiss The JDR court held an unrecorded oral hearing on the jurisdictional issue on January 17, 2008, without taking evidence and denied the Motion to Dismiss with only the words:

> "Motion to Dismiss Denied. Continued for Full Hearing."
>
> - *See, Jan. 17, 2008 JDR Dismissal Order,* Reprinted at Pet. App. 1

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months preceding the filing. *VA Code § 20-146.12* (Reprinted at Pet. App. 26-27); *see, Rosen v. Celebrezze*, 883 N.E.2d 420, 427-28 (Ohio 2008) (*citing Stephens v. Fourth Judicial Dist. Court*, 2006, 128 P.3d 1026, 1029 (Mont. 2006)).

[3] "Continuing Jurisdiction" refers to the ability of a state to enter any further child custody orders (including interim or temporary order). Under the Virginia UCCJEA, continuing jurisdiction is automatically lost as soon no party lives in Virginia. *See, VA Code §20-146.13.* Reprinted at Pet. App. 27.

The JDR Court -- which must first process the notice of appeal -- refused to allow an appeal of that *JDR Dismissal Order*, without issuing a written order, but leaving only a "sticky" note in the court file to that effect.[4]

The JDR Court Effectively Terminated Dr. King's Parental Rights in an Ex Parte Hearing Without Evidence and Proper Notice: Dr. King was representing herself *pro-se* in June 2008 because she could not afford a private attorney in Virginia at that time. She filed Motions to Continue seeking to postpone a June 6, 2008 JDR hearing. The Motions asked that the June 6, 2008 hearing be continued until 1) the Supreme Court of Virginia ruled on the subject matter jurisdiction issue raised by her pending petition for mandamus[5] *and 2)* the resolution of a pending investigation into sexual abuse, physical abuse and medical neglect by Dr. Pfeiffer initiated by a Maryland Court on June 2, 2008.[6] Rather

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[4] The JDR Clerk would not allow Petitioner to copy the note, because she said notes may not be copied.

[5] Dr. King filed *pro-se* a Petition for Writ of Mandamus and Prohibition on May 15, 2008 with the Supreme Court of Virginia. On October 17, 2008, the Petition was denied on procedural grounds: "*mandamus and prohibition are not substitutes for appeal and do not lie to challenge actions within a court's jurisdiction.*" *See, Mandamus Order of VA Supreme Court*, Rec. No. 080963, October 17, 2008, *rehearing denied* February 2, 2009, (unpublished) Reprinted at Pet. App. 17.

[6] A TPO was issued June 2, 2008 by a Maryland Circuit Court that gave Dr. King temporary custody and found: "*That there are reasonable grounds to believe that Respondent committed the following abuse: Statu-*

than continue the June 6, 20008 hearing, the Virginia JDR Court proceeded without Dr. King's presence.

Without any reasons or findings of facts stated, the JDR Court issued an *ex parte* "final order" which only stated:

> SOLE LEGAL AND PHYSICAL CUSTODY OF ARIANA LEILANI KING-PFEIFFER IS

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tory abuse of a child (Physical, Sexual) (Forward to DSS for investigation." MD TPO, Case 70620FL, June 2, 2008 The next hearing was set for June 9, 2008. Dr. King took her child for medical treatment and diagnosis for a recently discovered severe neutropenia and sexual abuse. Meanwhile, a second judge at an unscheduled ex parte hearing called by the Dr. Pfeiffer's attorney on June 5, 2008 prematurely quashed the Maryland TPO. Dr. Pfeiffer then went on June 6 to a Virginia JDR Court hearing, that then proceeded *ex parte*, where the Judge accepted his attorney's word that Dr. King had kidnapped the child, custody needed to be transferred to the father and contact prohibited with the mother. At the Dr. Pfeiffer's insistence Dr. King was arrested at New York's Montefiore Children's Hospital where she sought evaluation and treatment for her child. Due to a misstatement of charges, Dr. King was held without bail in New York's Rikkers Island Prison for 23 days, although the maximum sentence for such alleged parental kidnapping was 30 days. Almost one year later, Dr. King was forced to plead guilty to parental kidnapping when the presiding Maryland court refused to allow Dr. King any of her expert witnesses and any defenses at her jury trial. Dr. King received no further imprisonment, nor was she placed on probation. An appeal is pending of the June 5, 2008 *ex parte* action that prematurely quashed the Maryland TPO.

> GRANTED TO HER FATHER, MICHAEL H. PFEIFFER. THE MOTHER, ARIEL R. KING, SHALL NOT HAVE ANY CONTACT WITH THE CHILD UNTIL SHE AVAILS HERSELF TO THE COURT AND COMPLETES A PSYCHOLOGICAL EVALUATION
>
> - *June 6, 2008 JDR Custody Order,* Reprinted at Pet. App. 2-4

Concurrently, the JDR Court entered five *Capias* orders that would have caused Dr. King's arrest and imprisonment *if* she appeared before the JDR Court. *See, June 6, 2008 Capias Orders,* Reprinted at Pet. App. 5-11. The "no contact" "final order" together with the *June 6, 2008 Capias Orders* effectively terminated *pro-se* litigant Dr. King's parental rights without an evidentiary hearing and proper notice.[7]

The Not of Record JDR Court Denied The Mother's Motion to Set Aside the JDR Order In Another Ex Parte Hearing: In undated orders that were entered at a September 16, 2008 *ex parte* unrecorded hearing, the last actions were taken by the JDR Court. The JDR court ignored a *Motion To Quash Defective September 16, 2008 Hearing Notices And Continuance Of Hearing To A Later Date,* filed *pro-se* by Dr. King on

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[7] Dr. King already had a psychological (plus two more after that), and filed a praecipe in August 14, 2008 to that effect, however the JDR Court took no action -- despite her satisfaction of the Order's condition. In every evaluation, Dr. King was shown to be fit for being the child's mother. As noted in the text, the JDR Court's home study supported her fitness.

September 2, 2008. In its undated orders, the JDR Court denied Dr. King's *Motion to Set Aside the June 6, 2008 JDR Order* based on fraud by Dr. Pfeiffer and other irregularities, but granted Dr. Pfeiffer's Motion to release the child's German Passport from the Court. *See, September 16, 2008 JDR Orders*, Reprinted at Pet. App. 12-13

2. The Mother Is Denied Her Right to *De Novo* Appeal by the Arlington Circuit Court

On September 26, 2009 Dr. King filed a timely Notice of Appeal to the circuit court of the JDR orders. Reprinted at Pet. App. 14. As a matter of law, Dr. King was entitled to *de novo* review on such appeal. *VA Code §16.1-106. Appeals from courts not of record in civil cases.* Reprinted at Pet. App. 21. Dr. King's appeal to the Circuit Court sought review of the denial of her various Motions, including the JDR Court's failure to dismiss for lack of subject matter jurisdiction -- which may be challenged at any time.

In an Unrecorded Unscheduled Ex Parte Hearing with only the Father's Attorney Present, the Circuit Court Summarily Dismissed the Appeal Thus Denying the Opportunity for *De Novo* Review of the JDR Order: Before the first scheduled hearing in the Arlington Circuit Court and, in turn, the *de novo* review of statutory right begun, Dr. Pfeiffer filed a Motion to Dismiss October 10, 2008, and had it expeditiously heard in an unscheduled *ex parte* hearing, in Arlington County Circuit Court Judge on October 17, 2008 -- before oppositions to the Motion were even due and before the first scheduled preliminary hearing. Dr. King was still under

threat of arrest or imprisonment by the JDR *Capias Orders* if she appeared in court *pro-se* and therefore remained caught in the legal "Catch-22." The Circuit Court entered an *ex parte* order dismissing the *de novo* appeal claiming that the case was "moot" despite the fact that no pleadings had yet been filed by Dr. King setting forth the issues to be raised and reviewed *de novo*, including the issues of 1) the lack of subject matter jurisdiction of the Virginia courts, and 2) her Motion to Set Aside the "final" *June 6, 2008 JDR Orders*.

3. The Mother's *Pro Se* Brief Is Rejected For Form of Mailing, and the Virginia Court of Appeals Summarily Affirms Without Review

Appellate briefs to the Virginia Court of Appeals were due by mailing on or before February 23, 2009. *VSCR §5A:3(c)* Dr. King filed an Appellate brief *pro-se* by mail with the Clerk of the Court of Appeals on February 23, 2009, using US Postal Service (USPS) priority mail, with signature confirmation.

On March 17, 2009, the Court of Appeals summarily refused to review the brief. *See, March 17, 2009 COA Dismissal Order,* Reprinted at Pet. App. 18. Although the Court of Appeals recognized that the brief was timely mailed on February 23, 2009 by USPS priority mail with signature confirmation, it said it would not be accepted because it was not mailed by the more costly "express" or "certified" mail. Even though the case below involved a threshold subject matter jurisdictional issue and the effective termination of parental rights and obvious procedural errors below, the Court of Appeals stated:

> *On appeal, the judgment of the trial court is presumed correct and the burden is on the party who alleges error to show by the record that reversal is the remedy to which appellant is entitled (cite and footnote omitted)*
>
> *Because the opening brief was not timely filed, appellant has failed to present to this Court any questions of error on the part of the trial court. "We will not search the record for errors .... " (cite omitted) Accordingly, we summarily affirm the judgment of the trial court without opinion as to whether error exists in the record. Rule 5A:27.*
>
> - *See March 17, 2009 Order of Court of Appeal* Reprinted at Pet. App, 18

Had the brief been mailed by USPS "express" mail (the fastest alternative USPS offering) or "certified" mail, it would not have been delivered any faster or tracked any better than that experienced using the USPS priority mail, with signature confirmation. *See*, USPS Tracking for February 23, 2009 Brief to Court of Appeals, Reprinted at Pet. App. 28.

Dr. King sought timely rehearing explaining that the method of mailing was equivalent to certified mail named in the rules, and that under the Virginia case law, it was enough to show support by the documentation of mail tracking from USPS proving the identical results to satisfy the rule and thus, the brief should be treated as timely filed. In the alternative, Dr. King asked that the rule be waived given that the effective termination of parental rights were at issue.

On May 11, 2009, the Court of Appeals denied a Petition for Rehearing of their March 17 Order.

(*See, May 11, 2009 COA Order,* Reprinted at Pet. App. 19), *rehearing en banc denied, May 29, 2009.*

4. The Virginia Supreme Court Summarily Refused To Review Because It Was a Case Involving the Custody of a Child

On June 10, 2009, Dr. King filed a Petition for Appeal to the Supreme Court of Virginia. On August 18, 2009, the petition was dismissed for lack of jurisdiction to hear appeals of cases involving custody. *See, August 18, 2009 Order of the Supreme Court Virginia*, Reprinted at Pet. App. 20

This Petition for Certiorari seeks review of the proceedings below.

REASONS TO GRANT THE PETITION

This petition seeks to address an epidemic problem that occurs all too often in the fractured state-level not of record family courts. As in this case, through a combination of actions taken by such not of record Courts, a legal "Catch-22" that effectively terminates a parents rights to have any contact with their child -- can result without due process and equal protection. The parent whose rights are terminated is typically the parent that raises the issue of abuse and neglect by the other parent. In this case, "Catch-22" is created from a lethal combination of court orders terminating the parental rights of the *pro-se* litigant and "*Capias Orders*" threatening imprisonment of that litigant if she appeared in Court seeking to correct those orders. *Pro-se* representation by one of the parties is common in not of

record courts because the bulk of the financial resources and/or earning power are typically in the possession or control of one parent.

While this Court has addressed the minimum procedural protections required for a litigant where parental rights are formally terminated, it has not *explicitly* addressed the need for protections where parental rights are effectively terminated in the context of "custody case." *M. L. B. v. S. L. J.*, 519 U.S. 102, 117 S.Ct. 555 (1996). As demonstrated by the instant case, custody cases that effectively terminate the rights of one of the parents have fallen between the cracks for constitutional protection. This has occurred in part because of the jurisdictional ambiguity created by each state autonomously interpreting its own version of the UCCJEA and applying its own standards,[8] and also in part because these cases are often handled by the lowest not of record family courts in the state. Those not of record family courts often operate without any transparency. The Federal court system provides no practical alternative venue except where there is a Federal statute specifically providing otherwise -- such as Hague cases under ICARA[9]. (*e.g.*,

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[8] Although Congress had adopted the *Parental Kidnapping Prevention Act (PKPA)* 28 U.S.C. §1738A, this Court has ruled that it provides no private right of action for compliance with the act's requirements for whether a state may rule on a custody matter. *Thompson v. Thompson, Aka Clay*, 108 S. Ct. 513, 484 U.S. 174, 178-179 (1988). In addition, the PKPA preceded the UCCJEA adopted now in many states.

[9] *International Child Abduction Remedies Act ("ICARA"), 42 U.S.C. §§ 11601-11610.*

Holder v. Holder, 305 F.3d 854, 866 (Fed. 9th Cir., 2002)).

The non-Hague Convention custody cases -- which constitute most custody cases -- are left to the not of record state courts that experience shows are adverse to "high conflict" cases on their docket. The experiences of Dr. King illustrate the impunity with which the not of record court in Virginia can operate. The instant case illustrates a scenario that can, and does, happen all to often in many family courts -- where parent-child connections are effectively destroyed with less meaningful appellate scrutiny than a traffic ticket case. The omission of scrutiny and concern arises from the stigma of being labeled "custody cases," that are delegated to the lowest tier not of record equity courts with the least due process protections.

Denial of due process and equal protection cannot be rationalized by a view that child custody decisions are "peculiar" because they may *theoretically* be changed if there is a "material change in circumstances." See, e.g., *Thompson v. Thompson*, 484 U.S. at 180 (*citing Hooks v. Hooks*, 771 F.2d 935, 948 (CA6 1985)). That view is a fiction in the case of a *pro-se* litigant who is threatened with imprisonment because they may never get that opportunity seek a change in the order. Even if they one day had their day in court, they would have to overcome the inertia of the original flawed decision, and faced the higher subjective standard of "material change in circumstances" applied by the very court that put the *pro-se* litigant in the "Catch-22."

This Court Has Spoken On the Applicability of The Fourteenth Amendment Protections Where Termination of Parental Rights Are At Stake:

The Court has been of the unanimous view that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment," and that "[f]ew consequences of judicial action are so grave as the severance of natural family ties." They are sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect. *M. L. B.*, at 102 117 and 119, (*quoting Santosky v. Kramer, 455 U. S. 745, 787, 102 S.Ct. 1388 (1992).* and *Boddie v. Connecticut*, 401 U.S. 371, 376, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971)).

"A parent's interest in the accuracy and justice of the decision . . . is . . . a commanding one." "Unlike other custody proceedings, it leaves the parent with no right to visit or communicate with the child . . . ." (footnote omitted))). *M. L. B. at 102, 117* (*quoting Lassiter v. Department of Social Services. of Durham City., 452 U.S. 18, 27 and 29, 101 S.Ct. 2153 (1981)* (appointment of counsel for indigent defendants in parental status termination proceedings is not routinely required by the Constitution, but should be determined on a case-by-case basis)

The Court has found that appeal of parental termination must be treated as the Court has treated petty offense appeals. The Court's decisions concerning access to judicial processes, reflect both equal protection and due process con-

cerns. The court has further found that in these types of cases, ``[d]ue process and equal protection principles converge." A ``precise rationale" has not been composed, because cases of this order ``cannot be resolved by resort to easy slogans or pigeonhole analysis." The Court has recognized, ``[m]ost decisions in this area," ``res[t] on an equal protection framework," for due process does not independently require that the State provide a right to appeal. *See, M. L. B. at 120.*

The Court places decrees forever terminating parental rights in the category of cases in which the State may not ``bolt the door to equal justice." *Griffin v Illinois, 351 U. S. 12 at 24, 76 S.Ct. 585 (1956).* The fact that a case might be labeled as "civil" would not deter this Court from a fourteenth amendment analysis. *See, M. L. B., v. S. L. J., 519 U.S. 128.*

As this court has stated although the Federal Constitution guarantees no right to appellate review, once a State affords that right, the State may not "bolt the door to equal justice". *Griffin* at 24 (1956). When deprivation of parental status is at stake counsel is sometimes part of the process that is due. *See, Lassiter, 452 U. S., at 31-32.*

This Case Raises The Important Question Of Whether Equal Access To A Fair Appeal Or Rehearing Can Occur If The *Pro-Se* Litigant, Whose Parental Rights Are Terminated, Is Under The Threat Of Arrest If She Appears In Court, and Counsel Not Provided:

In the instant case, Dr. King could not appear before the Circuit Court because of fear of arrest under the JDR court's *Capias Orders*, thus preventing her from defending the motion to dismiss

of Dr. Pfeiffer which succeeded in cutting off the *de novo* review of the JDR Court. Similarly, Dr. King could not appear before the JDR Court below when it denied her Motion to Vacate based solely on the Dr. King's not appearing in the Court and exposing herself to potential civil arrest and imprisonment by the JDR Court's *Capias Orders*.

The use of civil contempt orders to imprison *pro-se* litigants in custody cases who have no counsel to fully exercise their rights of appeal and defend their rights is all too common. The grant of this Petition would allow this court to address this important issue.

Denial of Due Process and Equal Protection Where The JDR Decision Was Arbitrary, Without Reason or Findings of Fact, and a "Catch-22" State Action:

Like in the *M.L.B. Case*, the JDR Order described no evidence, and otherwise details no reasons for finding Dr. King "clear[ly] and convincing[ly]" unfit to be a parent. *See, VA Code §20-124.2 (B). Court-ordered custody and visitation arrangements.* Reprinted at Pet. App. 23. Despite this, Dr. King was denied her right to *de novo* appeal because she had no attorney to represent her, and no effective way to appear on her own behalf due to the JDR Court created "Catch-22" of custody and *Capias Orders* threatening Dr. King's arrest and imprisonment. This "Catch-22" denied Dr. King both due process and equal protection.

Denial of a *De Novo* Appeal of the Not of Record Court Proceedings In Itself Is a Denial of Due Process and Equal Protection:

The JDR Court in Virginia is not a "court of

record." All litigants in the JDR Court are entitled by statute to *de novo* appellate review in the Circuit Court

Dr. King was entitled to a fair *de novo* review of the JDR Court's decision in the Circuit Court with the aid of a court-provide attorney particularly given that Dr. King was threatened by the JDR Court with arrest and imprisonment if she appeared, including appearing in any hearing before the Circuit Court to represent herself in her statutorily entitled *de novo* appeal.

Dr. King was denied due process and equal protection because of the Catch-22 created by the Virginia JDR Court's orders. Namely, Dr. King was unable to participate in her appeal because if she appeared she was threatened with arrest and imprisonment by the *Capias Orders*. She could not defend her appeal because she could not appear. Virginia did not offer counsel to Dr. King to represent her in her appeal.

Dr. King was effectively denied the *de novo* appeal she was entitled to, which appeal others in similar situations were afforded because if they could afford their own counsel.

The Denial of Acceptance of an Appellate Brief that Was Timely Mailed Is Also a Denial of Due Process and Equal Protection:

Dr. King, being *pro-se*, believed that USPS's online "priority mail with signature confirmation" was the online equivalent to what the Court's rules called USPS's "certified mail." Even if it was not, the filing could not have arrived sooner to the clerk's office by any other method offered by the USPS, as demonstrated by the tracking information from USPS.

That Court refused to "search for [even the obvious] errors," despite that the case involved obvious errors that caused the effective termination of parental rights, and that threshold issues of whether the Virginia even had subject matter jurisdiction were at issue. No doubt had Dr. King been able to afford a Virginia attorney who regularly filed before the Virginia Court of Appeals, this superficial issue might not have occurred. By refusing an appeal only because the *pro-se* litigant used a functionally equivalent USPS mail service that had all of the features of the specified USPS service, Dr. King was denied due process and equal protection in the same way that this Court found when a litigant could not afford to purchase the requisite transcript (*Griffin)* or pay a particular filing fee (*In Re M.L.B.*).

The Denial of Constitutional and Internationally Recognized Human Rights of the Child Without Substantive Review Is a Denial of Due Process and Equal Protection:

The unheard victim of this case is Dr. King's now six-year-old daughter of both German and US citizenship. She did nothing wrong, yet her rights, including equal protection, freedom of speech, and liberty to have contact with her mother (including even supervised telephone calls and birthday cards), were denied without due process and equal protection. One can only imagine what this child is thinking about her mother's existence and why her mother -- who tried to get help for her -- has been erased from this child's life. As this court stated, "[f]ew consequences of judicial action are so grave as the severance of natural family ties," *M. L. B. at 119.* Thus, the

Fourteenth Amendment Protections must be extended to the child, who has lost something no one can replace -- her protective natural mother. With the loss of her natural mother, she has lost her primary proponent of her African-American, Jewish and German heritage. She has lost her greatest protector from abuse and neglect. To this child, her mother now no longer exists because a not of record Virginia JDR court was able to bar all contact with her mother, in a one line order with no findings of substantial evidence to support that outcome and contrary to the recommendations of the only Court-directed custody evaluation that was received by that Court. Such an outcome -- without any evidentiary hearing of record with proper proof and with no effective appellate review to the *pro-se* litigant parent due to threat of arrest -- is surely unconstitutional. It also flies in the face of the rights this child has under international law as a German citizen. See, UN Convention on the Rights of the Child, *United Nations, Treaty Series, vol. 1577, p.* 3 (1989), (Ratified by all countries *except* the US and Somalia). Even children of incarcerated criminals are allowed to have some form of contact with their incarcerated parents. Dr. King -- who has never been found to be an unfit mother and in her professional life has helped thousands of children -- sought to protect her own daughter from abuse and neglect by seeking medical and psychological care for her daughter -- fulfilling a legal obligation that she has as a parent.

Dr. King's daughter's basic constitutional and human rights to have contact with her mother cannot be taken away without some form of substantive review of the "not of record" JDR Court

decision and the requisite showing of "clear and convincing" evidence. *See, VA Code §20-124.2 (B). Court-ordered custody and visitation arrangements.* Reprinted at Pet. App. 23.

The due process and equal protection denied Dr. King also caused the denial of freedom of speech, liberty, expression, and internationally recognized human rights to her now six-year-old child.

CONCLUSION

For the reasons set forth herein, the Petition should be granted, and ultimately the relief of reversal be granted. Denied fairness, due process, equal protection, and fundamental human rights for both child and parent call for this court to enable them to have their day in court, which only this court can do at this time. By doing so, this Court will help address a significant problem in the often-overlooked and out-of-view family courts of many states.

Respectfully submitted,

Roy L. Morris, Esq.*
Offices of Roy Morris
PO Box 100212
Arlington, Virginia
22210
202 657 5793
*Counsel of Record

David Helfrey, Esq.
Helfrey, Neiers and
Jones
120 S. Central Avenue,
Suite 1500
St. Louis, MO 63105
314-725-9100

Counsel for Petitioner Dr. Ariel R. King (Pro Bono)

November 16, 2009

APPENDIX

PART I: RELEVANT ORDERS (CHRONOLOGICAL)

JAN 17, 2008 JDR MOTION TO DISMISS ORDER (SIC)

ORDER
Commonwealth of Virginia
Case No.: JJ031848-01-02
ARLINGTON J&DR COURT
Juvenile and Domestic Relations District Court
Commonwealth of Virginia
V. /In re: ARIANA LEILANI KING-PFEIFFER
THE FOLLOWING PARTIES WERE PRESENT:

[X] **Guardian *ad Litem*** DEBORAH OLIN
[X] **Petitioner/Complainant**
[X] **Attorney** R. BENZINGER
[X] **Respondent/Defendant**
[X] **Attorney** S. O'CONNELL

Type of Case: CUSTODY
Type of Hearing: x MOTION TO DISMISS
FINDINGS OF THE COURT· (blank)
IT IS ORDERED THAT:
MOTION TO DISMISS IS DENIED.
CONTINUED FOR FULL HEARING
This case is continued to: (blank)
01/17/2008 /Date /s/ Esther Wiggins-Lyles
Date **Judge**
FORM DC-570 (PAGE ONE OF ONE (12/98) PDF

JUNE 6, 2008 JDR CUSTODY ORDER

ORDER FOR CUSTODY/VISITATION GRANTED TO INDIVIDUALS
Commonwealth of Virginia VA CODE §§16.1-278.15, 20-124.2
Case No.: JJ031848-01-00
06/06/2008 / **DATE OF HEARING**
ARLINGTON J&DR COURT
Juvenile and Domestic Relations District Court
In re: ARIANA LEILANI KING-PFEIFFER / **NAME OF CHILD**
05/07/2003 / **DATE OF BIRTH**

PRESENT:

- [X] **Father:** MICHAEL HERBERT PFEIFFER
- [X] **Father's Attorney:** SEAN W. O'CONNELL
- [ ] **Mother** _____
- [ ] **Mother's Attorney** _____
- [X] **Guardian *ad Litem*** DEBORAH OLIN
- [X] **Other** Michele Wood, PO

The above-named child has been brought before this Court upon the filing of a written petition or motion concerning custody or visitation or for which transfer of custody is a dispositional alternative. Legal notice has been given to all proper and necessary parties. All provisions of the Juvenile and Domestic Relations District Court Law have been duly complied with in assuming jurisdiction over the child, and all determinations have been made in accordance with the standards set forth in Virginia Code §

16.1278.4, § 16.1-278.5, § 16. I -278.6 or § 16.1-278.8 or § 16.1·278.l5 and §§ 20-124.1 through 20-124.6.

HAVING CONSIDERED ALL RELEVANT AND MATERIAL EVIDENCE PRESENTED AND THE BEST INTEREST OF THE CHILD, THE COURT FINDS THAT THE CHILD IS WITHIN THE JURISDICTION OF THIS COURT AND FURTHER FINDS AND ORDERS THAT:

1. (not checked)

2. Custody/Visitation:
SOLE LEGAL AND PHYSICAL CUSTODY OF ARIANA LEILANI KING-PFEIFFER IS GRANTED TO HER FATHER, MICHAEL H. PFEIFFER. THE MOTHER, ARIEL R. KING, SHALL NOT HAVE ANY CONTACT WITH THE CHILD UNTIL SHE AVAILS HERSELF TO THE COURT AND COMPLETES A PSYCHOLOGICAL EVALUATION

The basis for the decision determining custody or visitation has been communicated to the parties orally and in writing.

3. (not checked)

4. Relocation. Each party intending a change of address shall give 30 days advance written notice of such change of address to the court and other party, pursuant to Virginia Code § 20-124.5. Unless otherwise provided in this order, this notice shall contain

the· child's full name, the case number of this case, the party's new telephone number and new street address and, if different, the party's new mailing address. Unless otherwise provided in this order, the notice shall be mailed by first-class or delivered to this court and to the other party.

5. Access to Records. In accordance with Virginia Code § 20-124.6, neither parent. regardless of whether such parent has custody, shall be denied access to the academic or health records of that parent's minor child, unless otherwise provided in this order or, in the case of health records, if the minor's treating physician or clinical psychologist has made a part of the child's health record a written statement that furnishing to or review by the parent of such health records would be reasonably likely to cause substantial harm to the minor or another person.;

6. This Order is [X] FINAL

06/06/2008 /s/ Esther Wiggins-Lyles
Date **Judge**

FORM DC-573 (MASTER) REVISED 7/05

JUNE 6, 2008 CAPIAS ORDERS

***CAPIAS*: ATTACHMENT OF THE BODY (CIVIL)**
Commonwealth of Virginia
CASE NO. JA020404-01-01

VA. CODE §§8.01-508, 8.01-519, 8.01-564, 8.01-565, 16.1-69.4, 16.1-278.16, 18.2-456, 19.2-358
[X] **Juvenile and Domestic Relations District Court**
ARLINGTON J&DR COURT **/CITY OR COUNTY**
1425 N COURTHOUSE RD, ARLINGTON, VA 22201 **/ STREET ADDRESS OF COURT**

TO ANY AUTHORIZED OFFICER:
You are hereby commanded in the name of the Commonwealth forthwith to arrest the Respondent, and to produce the Respondent in this Court when found, or as soon thereafter as this Court may be in session., to show cause, if any, why Respondent should not, pursuant to Va. Code §16.1-164

[X] **(Other-explain)** FAILURE TO APPEAR ON JUNE 6, 2008 AT 10:00 AM

The following information is provided to the Judicial Officer in determining bail:

ARREST THIS RESPONDENT:
KING, ARIEL R. / **LAST NAME, FIRST NAME - MIDDLE INITIAL**
11725 GREENLANE DR. POTOMAC, MD 20854
RACE: B **SEX:** F
BORN: MO: 06 DAY: 25 YR: 62
HT: FT: 5 **IN:** 04 **WGT:** 105
EYES: BR **HAIR:** BR
SSN: XXX-XX-XXXX

***CAPIAS*: ATTACHMNET OF THE BODY CIVIL**

In Re: ARIEL R. KING/ **DEFENDANTS**

UNDERLYING CASE NO.: JA020404-01-01

EXECUTED by arresting the Respondent names above this day: ___ / DATE AND TIME
_____Arresting Officer
_____BADGE NO., AGENCY AND JURISDICTION

FOR _____/ SHERIFF

HEARING DATE AND TIME: _____

06/06/2008 /s/ Esther Wiggins-Lyles
Date Issued [X] **Judge**

CAPIAS: ATTACHMENT OF THE BODY (CIVIL)
Commonwealth of Virginia
CASE NO. JA020404-02-01

VA. CODE §§8.01-508, 8.01-519, 8.01-564, 8.01-565, 16.1-69.4, 16.1-278.16, 18.2-456, 19.2-358
[X] **Juvenile and Domestic Relations District Court**
ARLINGTON J&DR COURT **/CITY OR COUNTY**
1425 N COURTHOUSE RD, ARLINGTON, VA 22201 **/ STREET ADDRESS OF COURT**

TO ANY AUTHORIZED OFFICER:
You are hereby commanded in the name of the Commonwealth forthwith to arrest the Respondent, and to produce the Respondent in this Court when found, or as soon thereafter as this Court may be in session., to show cause, if any, why Respondent should not, pursuant to Va. Code

[X] **(Other-explain)** FAILURE TO APPEAR ON JUNE 6, 2008 AT 10:00 AM

The following information is provided to the Judicial Officer in determining bail:

06/06/2008 — **Date Issued**

/s/ Esther Wiggins-Lyles — [X] **Judge**

CAPIAS: ATTACHMENT OF THE BODY (CIVIL)
Commonwealth of Virginia
CASE NO. JA020404-04-01

VA. CODE §§8.01-508, 8.01-519, 8.01-564, 8.01-565, 16.1-69.4, 16.1-278.16, 18.2-456, 19.2-358
[X] **Juvenile and Domestic Relations District Court**
ARLINGTON J&DR COURT **/CITY OR COUNTY**
1425 N COURTHOUSE RD, ARLINGTON, VA 22201 **/ STREET ADDRESS OF COURT**

TO ANY AUTHORIZED OFFICER:
You are hereby commanded in the name of the Commonwealth forthwith to arrest the Respondent, and to produce the Respondent in this Court when found, or as soon thereafter as this Court may be in session., to show cause, if any, why Respondent should not, pursuant to Va. Code _____

[X] **(Other-explain)** FAILURE TO APPEAR ON JUNE 6, 2008 AT 10:00 AM

The following information is provided to the Judicial Officer in determining bail:

06/06/2008 — **Date Issued**

/s/ Esther Wiggins-Lyles — [X] **Judge**

CAPIAS: ATTACHMENT OF THE BODY (CIVIL)
Commonwealth of Virginia
CASE NO. JA020404-02-01

VA. CODE §§8.01-508, 8.01-519, 8.01-564, 8.01-565, 16.1-69.4, 16.1-278.16, 18.2-456, 19.2-358
[X] **Juvenile and Domestic Relations District Court**
ARLINGTON J&DR COURT **/CITY OR COUNTY**
1425 N COURTHOUSE RD, ARLINGTON, VA 22201 **/ STREET ADDRESS OF COURT**

TO ANY AUTHORIZED OFFICER:
You are hereby commanded in the name of the Commonwealth forthwith to arrest the Respondent, and to produce the Respondent in this Court when found, or as soon thereafter as this Court may be in session., to show cause, if any, why Respondent should not, pursuant to Va. Code _____

[X] **(Other-explain)** FAILURE TO APPEAR ON JUNE 6, 2008 AT 10:00 AM

The following information is provided to the Judicial Officer in determining bail:

06/06/2008 — **Date Issued**

/s/ Esther Wiggins-Lyles — [X] **Judge**

CAPIAS: ATTACHMENT OF THE BODY (CIVIL)
Commonwealth of Virginia
CASE NO. JA020404-05-01

VA. CODE §§8.01-508, 8.01-519, 8.01-564, 8.01-565, 16.1-69.4, 16.1-278.16, 18.2-456, 19.2-358
[X] **Juvenile and Domestic Relations District Court**
ARLINGTON J&DR COURT **/CITY OR COUNTY**
1425 N COURTHOUSE RD, ARLINGTON, VA 22201 **/ STREET ADDRESS OF COURT**

TO ANY AUTHORIZED OFFICER:
You are hereby commanded in the name of the Commonwealth forthwith to arrest the Respondent, and to produce the Respondent in this Court when found, or as soon thereafter as this Court may be in session., to show cause, if any, why Respondent should not, pursuant to Va. Code 16.1-292

[ ] be imprisoned until the Respondent complies with the Court's order or be fined for:
[X] **Failure to obey and order of dated 10/01/2007 ordering** TO COOPERATE WITH THE GUARDIAN AD LITEM.

The following information is provided to the Judicial Officer in determining bail:

06/06/2008 /s/ Esther Wiggins-Lyles
Date Issued [X] **Judge**

CAPIAS: ATTACHMENT OF THE BODY
(CIVIL) Commonwealth of Virginia
CASE NO. JA020404-06-01
VA. CODE §§8.01-508, 8.01-519, 8.01-564, 8.01-565, 16.1-69.4, 16.1-278.16, 18.2-456, 19.2-358
[X] **Juvenile and Domestic Relations District Court**
ARLINGTON J&DR COURT **/CITY OR COUNTY**
1425 N COURTHOUSE RD, ARLINGTON, VA 22201 **/ STREET ADDRESS OF COURT**

TO ANY AUTHORIZED OFFICER:
You are hereby commanded in the name of the Commonwealth forthwith to arrest the Respondent, and to produce the Respondent in this Court when found, or as soon thereafter as this Court may be in session., to show cause, if any, why Respondent should not, pursuant to Va. Code 16.1-292
[ ] be imprisoned until the Respondent complies with the Court's order or be fined for:
[X] **Failure to obey and order of dated 02/21/2008 ordering** _____.
[X] **(Other-explain)** PHYSICAL CUSTODY OF ARIANA LEILANI KING-PFEIFFER GRANTED TO THE FATHER, MICHAEL PFEIFFER. THE DEFENDANT HAS ABDUCTED THE CHILD AND THE CURRENT WHEREABOUTS OF THE DEFENDANT AND CHILD ARE UNKNOWN.
The following information is provided to the Judicial Officer in determining bail:
06/06/2008 /s/ Esther Wiggins-Lyles
Date Issued [X] **Judge**

SEPTEMBER 16, 2008 UNDATED JDR ORDER DENYING DR. KING'S MOTION TO VACATE

COMMONWEAL TH OF VIRGINIA
ARLINGTON JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT 1425 N. COURTHOUSE ROAD, 4TH FLOOR, ARLINGTON, VA 22201

ORDER / RECORD OF PROCEEDINGS

ARIEL R. KING CASE NO. A-02-0404-06-01
PARTIES PRESENT:
[X] **Respondent/Defendant**
[X] **Attorney** SEAN O'CONNELL
[X] **Guardian *ad Litem*** DEBORAH OLIN

Type of Case: MOTON TO SET ASIDE ORDER
Type of Hearing: [X] REVIEW / MOTION

FINDINGS OF THE COURT:
IT IS ORDERED THAT *I* THE FINDINGS OF THE COURT ARE AS FOLLOWS:

PETITIONER/MOVANT DID NOT APPEAR. MOTION DISMISSED

–

/s/ Esther Wiggins-Lyles
Judge

JDR GREEN SHEET

SEPTEMBER 16, 2008 UNDATED JDR ORDER GRANTING DR. PFEIFFER'S MOTION TO RELEASE CHILD'S GERMAN PASSPORT

COMMONWEAL TH OF VIRGINIA
ARLINGTON JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT 1425 N. COURTHOUSE ROAD, 4TH FLOOR, ARLINGTON, VA 22201

ORDER / RECORD OF PROCEEDINGS

ARIANA LEILANI KING-PFEIFFER CASE NO. J-31848-01
PARTIES PRESENT:
[X] **Respondent/Defendant**
[X] **Attorney** SEAN O'CONNELL
[X] **Guardian *ad Litem*** DEBORAH OLIN
Type of Case: MOTON TO RELEASE PASSPORT (CUSTODY)
Type of Hearing: [X] REVIEW / MOTION
FINDINGS OF THE COURT:
IT IS ORDERED THAT *I* THE FINDINGS OF THE COURT ARE AS FOLLOWS:
MOTION GRANTED FATHER IS CURRENTLY EMPLOYED IN VIRGINIA AND HAS NO PLANS TO RELOCATE.
PASSPORT SHALL RELEASE FORTHWITH.
/s/ Esther Wiggins-Lyles **Judge**

JDR GREEN SHEET

SEPT 26, 2008 NOTICE OF APPEAL OF JDR PROCEEDING

NOTICE OF APPEAL - CIVIL
Commonwealth of Virginia VA Code §16.1-106, 16.1-107, 16.1-113, 16.1-298
Arlington : [X] **Juvenile and Domestic Relations District Court**
September 16, 2008 / **DATE OF FINAL ORDER**
I, the undersigned not my appeal of : [X] **judgment of this court to the circuit court of this city or county.**
My appeal is scheduled to be called for setting of the trial date on October 20, 2008 10:00 a.m. **in the circuit court, which is located at** 1425 N. Courthouse Rd., Arlington, VA 222201 703-228-7010
[X] **I understand that I must contact the circuit court clerk's office for instructions for setting the trial date.**
September 26, 26, 2008
Ariel R. King / **Appellant by** /s/ Ariel R. King
CASE NO. JJ-031848-01 NOTE OF APPEAL
Pfeiffer, Michael H./ Plaintiff/Petitioner v.
King, Ariel R. / Defendant
JUDGMENT DATE: September 16, 2008
PLAINTIFF'S/PETITIONER'S ATTORNEY:
Sean O'Connell, 4113 Lee Highway, Arlington VA 22207
DEFENDANTS/RESPONDENT'S ATTORNEY
Ariel King (*Pro-se*), 11725 Greenlane Drive, Potomac, MD 20854
Filed: September 26, 2008
FORM DC-475

OCTOBER 17, 2008 CIRCUIT COURT ORDERS

V I R GIN I A:
IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

ARIEL R. KING Plaintiff,
v. CASE NO. 08-1193
Related Case
No. JJ-031848-01

MICHAEL H. PFEIFFER Defendant.

ORDER

THIS CAUSE came upon the Motion of by Defendant Michael II. Pfeiffer for an order to dismiss Plaintiffs Petition for Declaratory Relief and to Vacate and it being the Courts view that the Petition should be denied, it is ORDERED that Defendant's motion to dismiss is granted and the above captioned case is dismissed and counsel for the Defendant is hereby awarded attorneys fees in the amount of 0

Entered this 17th day of October, 2008
/s/ Judge Kendrick /Judge

I ASK FOR THIS:
/s/ Sean O' Connell /Sean O'Connell Esq.
Virginia State Bar No. 27690
Tel: (703) 558-0000
Counsel for Defendant

SEEN AND OBJECTED TO: **(Seal of Clerk Circuit Court of Arlington)**

_____
Ariel R. King, *Pro-se* Petitioner

V I R GIN I A:
IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

ARIEL R. KING Plaintiff,
v. CJ 08-66 Y08-1193
CASE NO. JJ-031848-01
MICHAEL H. PFEIFFER Defendant.

ORDER

THIS CAUSE came upon the Motion of by Defendant Michael H. Pfeiffer for an order to dismiss Defendant Ariel King' Appeal of the Juvenile and Domestic Relations Court Order in the above captioned matter of September 16, 2008 and opposition thereto and the Court being of the opinion that the issue is moot as the Clerk has already delivered the passport of the child to the Petitioner, Dr. Pfeiffer, it is therefore ORDERED that Motion to Dismiss the appeal of Order of the Juvenile and Domestic Relations Court Order in the above captioned matter of September 16, 2008 directing the Clerk of that Court to release the passport to the petitioner is granted and that appeal is dismissed and denied as moot.

ENTERED this 17th day of October , 2008
/s/ Judge Kendrick /Judge

I ASK FOR THIS:
/s/ Sean O' Connell /Sean O'Connell Esq.
Virginia State Bar No. 27690
Tel: (703) 558-0000
Counsel for Defendant

SEEN AND OBJECTED TO: **(Seal of Clerk Circuit Court of Arlington)**

_____
Ariel R. King, *Pro-se* Petitioner

OCTOBER 17, 2008 SUPREME COURT OF VIRGINIA DENIAL OF PETITION FOR WRIT OF MANDAMUS AND PROHIBITION

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 17th of October, 2008

In Re: Ariel R. King, Ph.D., Petitioner
Record No. 080963

Upon a Petition for a Writ of Mandamus and Prohibition.

On consideration of this case, the court is of the opinion that the writs of mandamus and prohibition should not issue as prayed for because mandamus and prohibition are not substitutes for appeal and do not lie to challenge actions within a court's jurisdiction. It is therefore ordered that the said petition be dismissed.

A Copy,
Teste:
By:
Patricia L. Harrington,
Deputy Clerk

MARCH 17, 2008 COURT OF APPEALS ORDER REFUSING TO ACCEPT BRIEF

VIRGINIA:
17th day of March, 2009.

Ariel R. King, Appellant,

against Record No. 2775-08-4
Circuit Court Nos. CL08-1193 and CJ08-66
Michael H. Pfeiffer, Appellee.

From the Circuit Court of Arlington County

The record in this case was filed on January 12, 2009. The filing deadline for appellant's opening brief was February 23, 2009. Rule 5A:19. Appellant did not file the opening brief until February 25, 2009.[1]

On appeal, the judgment of the trial court is presumed correct and the burden is on the party who alleges error to show by the record that reversal is the remedy to which appellant is entitled. *See Vanegas v. Commonwealth*, 17 Va. App. 451, 452, 438 S.E.2d 289, 290 (1993).

Because the opening brief was not timely filed, appellant has failed to present to this Court any questions of error on the part of the trial court. "We will not search the record for errors .... " *Buchanan v. Buchanan*, 14 Va. App. 53, 56, 415 S.E.2d 237,239 (1992). Accordingly, we summarily affirm the judgment of the trial court without opinion as to whether error exists in the record. Rule 5A:27.

This order shall be certified to the trial court.
A Copy, Teste: By: /s/ Cynthia McCoy, Deputy Clerk

[1]Although the envelope in which the opening brief was contained was postmarked February 23, 2009, it was not mailed by certified or registered mail. Rule 5A:3(c).

MAY 11, 2009 COURT OF APPEALS ORDER DENYING REHEARING OF MARCH 17 ORDER

VIRGINIA:

In the Court of Appeals of Virginia on **Monday** *the* **11th** *day of* **May, 2009.**

Ariel R. King, Appellant,
against Record No. 2775-08-4
Circuit Court Nos. CL08-1193 and CJ08-66
Michael H. Pfeiffer, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 17th day of March, 2009 and grant a rehearing thereof, the said petition is denied.

A Copy,
Teste:
Cynthia L. McCoy, Clerk
original order signed by a deputy clerk of the
By: *Court of Appeals of Virginia at the direction of the Court*
Deputy Clerk

AUGUST 18, 2009 ORDER OF SUPREME COURT OF VIRGINIA**

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 18th of August 2009

Ariel King, Appellant

against Record 091175
Court of Appeals No. 2775-08-4

Michael Pfeifer, Appellee

From the Court of Appeals of Virginia

The Court dismisses the petition for appeal filed in the above-styled case for lack of jurisdiction. Code § 17.1-410(A) (3) and (B).

A Copy,
Teste:

By: /s/ Patricia L. Harrington, Clerk
Patricia L. Harrington, Clerk

PART II: SELECTED STATUTES

VA Code §16.1-106. Appeals from courts not of record in civil cases.

From any order entered or judgment rendered in a court not of record in a civil case in which the matter in controversy is of greater value than fifty dollars, exclusive of interest, any attorney's fees contracted for in the instrument, and costs, or when the case involves the constitutionality or validity of a statute of the Commonwealth, or of an ordinance or bylaw of a municipal corporation, or of the enforcement of rights and privileges conferred by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), or of a protective order pursuant to § 19.2-152.10, there shall be an appeal of right, if taken within ten days after such order or judgment, to a court of record. Such appeal shall be to a court of record having jurisdiction within the territory of the court from which the appeal is taken and shall be heard *de novo*.

VA Code §16.1-113. How appeals tried.

Every such appeal shall be tried by the court in a summary way, or, if the amount in controversy exceeds fifty dollars, by a jury if either party requires it. All legal evidence produced by either party shall be heard, whether or not it was produced before the court from which the appeal is taken. .....

VA Code §17.1-410. Disposition of appeals; finality of decisions.

A. Each appeal of right taken to the Court of Appeals and each appeal for which a petition for appeal has been granted shall be considered by a panel of the court.

When the Court of Appeals has (i) rejected a petition for appeal, (ii) dismissed an appeal in any case in accordance with the Rules of Court, or (iii) decided an appeal, its decision shall be final, without appeal to the Supreme Court, in:

1. Traffic infraction and misdemeanor cases where no incarceration is imposed;
2. Cases originating before any administrative agency or the Virginia Workers' Compensation Commission;
3. Cases involving the affirmance or annulment of a marriage, divorce, custody, spousal or child support or the control or disposition of a juvenile and other domestic relations cases arising under Title 16.1 or Title 20, or involving adoption under Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2;
4. Appeals in criminal cases pursuant to §§ 19.2-398 and 19.2-401. Such finality of the Court of Appeals' decision shall not preclude a defendant, if he is convicted, from requesting the Court of Appeals or Supreme Court on direct appeal to reconsider an issue which was the subject of the pretrial appeal; and
5. Appeals involving involuntary treatment of prisoners pursuant to § 53.1-40.1.

B. Notwithstanding the provisions of subsection A, in any case other than an appeal pursuant to § 19.2-398, in which the Supreme Court determines

on a petition for review that the decision of the Court of Appeals involves a substantial constitutional question as a determinative issue or matters of significant precedential value, review may be had in the Supreme Court in accordance with the provisions of § 17.1-411.

VA Code §20-124.2. Court-ordered custody and visitation arrangements.

A. In any case in which custody or visitation of minor children is at issue, whether in a circuit or district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of custody and visitation arrangements, including support and maintenance for the children, prior to other considerations arising in the matter. ....

B. In determining custody, the court shall give primary consideration to the best interests of the child. The court shall assure minor children of frequent and continuing contact with both parents, when appropriate, and encourage parents to share in the responsibilities of rearing their children. As between the parents, there shall be no presumption or inference of law in favor of either. The court shall give due regard to the primacy of the parent-child relationship but may upon a showing by clear and convincing evidence that the best interest of the child would be served thereby award custody or visitation to any other person with a legitimate interest. The court may award joint custody or sole custody.

C. The court may order that support be paid for any child of the parties. ....

Selected Virginia UCCJEA Provisions

VA Code §20-146.1. Definitions.

"**Child custody determination**" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, or modification order. The term does not include an order relating to child support or other monetary obligation." (emphasis added).

"**Child custody proceeding**" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Article 3 (§ 20-146.22 et seq.) of this chapter.

"**Commencement**" means the filing of the first pleading in a proceeding.

"**Court**" means a court of competent jurisdiction as determined by otherwise applicable Virginia law to establish, enforce, or modify a child custody determination or an entity authorized under the law of another state to establish, enforce or modify a child custody determination.

"**Home state**" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.

In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

"**Initial determination**" means the first child custody determination concerning a particular child.

"**Issuing court**" means the court that makes a child custody determination for which enforcement is sought under this act.

"**Issuing state**" means the state in which a child custody determination is made.

"**Modification**" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

.....

"**Physical custody**" means the physical care and supervision of a child.

...

VA Code §20-146.9. Communication between courts.

A. Before finding and exercising jurisdiction, a court of this Common-wealth shall communicate with the court appearing to have jurisdiction in any other state concerning a proceeding arising under this act

B. The court may allow the parties to participate in the communication.

If the parties are not able to participate in the communication,

they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.
C. Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties.
A record need not be made of the communication.
D. Except as otherwise provided in subsection C, a record must be made of a communication under this section.
The parties must be in-formed promptly of the communication and granted access to the re-cord.
E. For the purposes of this section, "record" means information that is in-scribed on a tangible medium or that is stored in an electronic
or other medium and is retrievable in perceivable form.

VA Code § 20-146.12. Initial child custody jurisdiction.

A. Except as otherwise provided in § 20-146.15, a court of this Common-wealth has jurisdiction to make an initial child custody determination only if:
1. This Commonwealth is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this Commonwealth but a parent or person acting as a parent continues to live in this Commonwealth;
2. A court of another state does not have jurisdiction under subdivision 1, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this Commonwealth is the

more appropriate forum under § 20-146.18 or § 20-146.19, and

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this Commonwealth other than mere physical presence and

(ii) substantial evidence is available in this Common-wealth concerning the child's care, protection, training, and personal relationships;

3. All courts having jurisdiction under subdivision 1 or 2 have declined to exercise jurisdiction on the ground that a court of this Commonwealth is the more appropriate forum to determine the custody of the child under § 20-146.18 or § 20-146.19; or

VA Code §20-146.13 Exclusive, continuing jurisdiction

A. Except as otherwise provided in § 20-146.15, a court of this Commonwealth that has made a child custody determination consistent with § 20-146.12 or § 20-146.14 has exclusive, continuing jurisdiction as long as the child, the child's parents, or any person acting parent continue to live in this Commonwealth.

B. A court of this Commonwealth that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under § 20-146.12.

USPS TRACKING FOR FEBRUARY 23, 2009 BRIEF TO VIRGINIA COURT OF APPEALS

Label/Receipt Number: 2103 8555 7491 4997 5857
Associated Label/Receipt: Detailed Results:
Delivered, February 25, 2009, 9:06 am, RICHMOND, VA 23219
Notice Left, February 24, 2009, 11:03 am, RICHMOND, VA 23219
Arrival at Unit, February 24, 2009, 10:26 am, RICHMOND, VA 23219
Processed, February 23, 2009, 9:56 pm, ZIP Code 20199
Electronic Shipping Info Received, February 23, 2009

Date: *03/23/2009*
Fax Transmission To: Ariel King
Fax Number: 509-356-2789
Dear: Ariel King:
The following is in response to your *03/23/2009* request for delivery information on your Signature Confirmation(TM) item number 210385557491 49975857. The delivery record shows that this item was delivered on *02/25/2009* at 09:06 AM in RICHMOND, VA 23219 to T.STANBURY. The scanned image of the recipient information is provided below.
Signature of Recipient/s/ Troy Stanbury
Address of Recipient: 109
Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.
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Supreme Court, U.S.
FILED
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No. 09-612

In The
Supreme Court of the United States

Ariel King,

Petitioner,

v.

Michael Pfeiffer,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of the Commonwealth of Virginia

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Is it a denial of a litigant's due process rights, including her right to challenge subject matter jurisdiction, if in order to obtain *de novo* review of a decision of a state Juvenile and Domestic Relations Court giving sole physical custody of her child to her spouse, she may arrested for having failed to appear at a sentencing hearing for civil contempt previously adjudicated?

2. Have constitutional rights of a child, who is not party to this appeal and who is represented by a guardian *ad litem*, been denied when her mother is barred from contact with the child until after appearing before the court which has found her in contempt and undergoing a psychological evaluation following a finding by the court that the mother had abducted the child (which finding was subsequently confirmed by the mother's pleading guilty to felony child abduction out of state) and that child protective services of a sister state had expressed fear for the child's safety while in custody of the mother?

3. Have constitutional or human rights of a child, who is not party to this appeal and who is represented by a guardian *ad litem*, been denied when her mother is barred from contact with the child until after appearing before the court which has found her in contempt and undergoing a psychological evaluation

following a finding by the court that the mother had abducted the child (which finding was subsequently confirmed by the mother's pleading guilty to felony child abduction out of state) and that child protective services of a sister state had expressed fear for the child's safety while in custody of the mother?

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OPINION BELOW

The opinion of the Virginia Supreme Court dismissing the appeal from the Virginia Court of Appeals is unpublished. (Pet. App. 20). The opinion of the Virginia Court of Appeals denying rehearing is unpublished. (Pet. App. 19). The opinion of the Virginia Court of Appeals dismissing the appeal from the Circuit Court is unpublished. (Pet. App. 18). The opinion of the Circuit Court of Arlington County denying appeal is unpublished. (Pet. App. 15). The two June 6, 2008 orders of the Arlington County Juvenile and Domestic Relations Court are unpublished. (Resp. App. 27, 31).

A series of unpublished orders is also relevant to this action. The April 8, 2008 order of the Arlington County Juvenile and Domestic Relations Court is unpublished. (Resp. App. 20). The two February 21, 2008 orders of the Arlington County Juvenile and Domestic Relations Court are unpublished. (Resp. App. 14, 18). The two February 8, 2008 orders of the Arlington County Juvenile and Domestic Relations Court are unpublished. (Resp. App. 10, 12). The January 17, 2008 order of the Arlington County Juvenile and Domestic Relations Court is unpublished. (Pet. App. 1). The November 8, 2007 order of the Arlington County Juvenile and Domestic Relations Court is unpublished. (Res. App. 8). The two September 5, 2007 orders of the Arlington County Juvenile and Domestic Relations Court are unpublished. (Resp. App. 1, 6).

STATEMENT OF JURISDICTION

The Supreme Court of Virginia issued its opinion on August 18, 2009. This court has jurisdiction under 28 U.S.C. §1257.

STATUTORY PROVISIONS INVOLVED

Va. Code §16.1-106, Appeals from courts not of record in civil cases is set forth at Pet. App. 21. Va. Code §17.1-410, governing the jurisdiction of the Virginia Supreme Court to hear appeals from the Virginia Court of Appeals, is set forth at Pet. App. 22. Rule 5A:3(c) of the Rules of the Supreme Court of Virginia governing the timing of filing petitions for appeal is set forth at Resp. App. 53.

STATEMENT OF THE CASE

Petitioner falsely asserts that her experience as an impoverished, *pro se* litigant subjected to arbitrary *ex parte* rulings has exposed constitutional flaws in Virginia's system for handling child custody cases in its Juvenile and Domestic Relations Court (JDR). The record, persistently mischaracterized by petitioner, shows that petitioner was far from impoverished and represented by six lawyers at six hearings in the case below.[1] The allegedly *ex parte* hearing in the JDR Court of which she complains was properly noticed and took place in open court. Petitioner chose not to attend, even though her attendance had been compelled.

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[1] Each of the JDR court orders lists attorneys present who were representing the parties.

Petitioner's failure to obtain plenary appellate review was caused by her failure to meet statutory deadlines. Petitioner raises no salient constitutional issues. Generalized complaints about the alleged mistreatment of *pro se* litigants do not apply in this case where petitioner was so substantially represented by counsel.

While petitioner dismissively characterizes the Juvenile and Domestic Relations Court as "not of record," a voluminous record was created which amply demonstrated that the actions of that court were warranted. The JDR Court held seven hearings. A trained and certified guardian *ad litem*, who was appointed to represent the interests of the child interviewed petitioner, respondent and the child, attended five hearings, and advised the court at each hearing she attended. In addition, an Arlington County probation officer, pursuant to court directive, conducted home visits related to child custody and safety issues and prepared reports. Additional interviews of petitioner, respondent, and child were conducted by a court-appointed psychologist. None of this is hinted at in the Petition. After participating vigorously with counsel in the process, petitioner chose not to attend the critical June 6, 2008 hearing because she faced sentencing for contempt arising from violations of numerous court orders and, of more import, she was that very day absent from the jurisdiction while committing the felony child kidnapping for which she was subsequently convicted.

In fact, the record shows that the court system of which petitioner complains did an admirable job in handling the case of a clearly disturbed litigant

engaging in illegal conduct and egregious forum shopping. In the series of hearings which the petition does not address, the judge, child protection personnel and the guardian *ad litem* all took measured and lawful steps to protect a child placed at risk by her mother. The Virginia court system, and the cognate court system in Maryland, each reached similar decisions concerning petitioner, about whom a Maryland child protective services official testified under oath on June 5, 2008 "This women's behavior concerned me to the point that I felt it, that I need the Court to help me protect this child." Petitioner responded to professional assessments questioning her version of events by avoiding psychological evaluations, attempting to change jurisdictions at least four times, and, eventually, engaging in felony child abduction.

The full record shows how seriously petitioner has mischaracterized the facts at every stage. [2]

I. The JDR Court Holds Extensive Hearings at Which Petitioner Is Represented by Counsel Before Determining Custody.

It is important to recognize how this case came to be in Virginia. On June 16, 2007, Dr. Michael Pfeiffer returned from a short business trip to find his house deserted, most belongings removed, and his wife and daughter gone. He had a number of brief cell phone conversations with the petitioner, who refused to

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[2] Because Supreme Court Rule 15.2 requires that a respondent "address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted," this Statement of the Case is necessarily lengthy.

reveal her whereabouts. He was allowed two one hour visits with his daughter. Petitioner filed for a protective order against respondent in the District of Columbia. At the hearing on that order – which was dismissed - petitioner was served with a complaint seeking divorce, custody and support. *Pfeiffer v. King*, Case No.07- DR-B2056, (Superior Ct. DC, Family Division) Petitioner appeared, represented by counsel, at a hearing on August 1, 2007 and stated that she had moved to Virginia and taken a one year lease on an apartment at 4001 North 9th Street, Arlington Virginia. This is a far cry from the "emergency temporary housing" described at Page 4 of the Petition. Petitioner stated under oath that she intended to domicile indefinitely in Virginia. Her counsel told the Superior Court that jurisdiction over custody resided solely in the Arlington Juvenile and Domestic Relations Court.

Petitioner Initially Participates in the JDR Proceedings with Counsel and Does Not Raise Any Jurisdictional Objections. Based on Petitioner's testimony before the District of Columbia court and her July 2007 move to Virginia, respondent filed the underlying case in the Juvenile and Domestic Relations Court for Arlington County, Virginia on August 9, 2008 seeking visitation and other relief. *Pfeiffer v. King*, Case No. J-31848-01 (Arlington County Juvenile and Domestic Relations Court). A hearing was held before the court on September 5, 2007. Petitioner appeared at the hearing, represented by attorney Daniel Dannebaum. At the hearing, the court entered an agreed order providing for primary physical custody with petitioner, granting petitioner temporary child support, and providing respondent with

visitation. (Resp. App. 1). The court ordered a full custody evaluation of the parents and child by a psychologist and selected the psychologist nominated by petitioner's counsel. (Resp. App. 6). Petitioner did not object to the jurisdiction of the Virginia court.

Pursuant to the September 5, 2007 Order, the evaluations by a psychologist were begun on the parents and the child. The court-appointed investigator, probation officer Michelle Woods, who conducted the home study also ordered by the court, requested that a guardian *ad litem* (GAL) be appointed to represent the interests of the child. Deborah Olin was appointed as GAL on or about September 26, 2007.

Petitioner Begins a Pattern of Non Compliance with the JDR Court Orders. As the process of custody evaluation moved forward, petitioner had an initial meeting with Dr. Lane, the court-appointed psychologist. After that meeting she suggested to respondent that he be given more visitation rights and the case be dropped. Respondent replied that he wanted the evaluations to be completed. Petitioner then asked both the court investigator and the GAL to deny the respondent visitation.

When petitioner learned that the investigator and GAL would not make such recommendations, she unilaterally and without notice rented an upscale home in Potomac Maryland on October 16 2007. This violated the September 5, 2007 court order which provided that the child could not be moved out of state unless the other parent consented or the court approved. Petitioner filed a *pro se* complaint for divorce in Maryland on October 19, 2007 claiming she was a

Maryland resident. This was clearly an attempt by petitioner to game the system and get away from the jurisdiction of a court she perceived to be unfriendly.

The court appointed investigator and GAL both conducted a home visit with petitioner and the child in Virginia after October 16, 2007 and were not informed of the Maryland move. At the scheduled November 8, 2007 hearing, petitioner was represented by attorney Raymond Benzinger. The GAL also appeared. The court issued an order continuing the custody hearing until February 8, 2008 because the psychological evaluation of petitioner had not been completed. (Resp. App. 10). Petitioner was ordered not to take the child out of the country. (Resp. App. 8). Neither petitioner nor her counsel disclosed the Maryland house or the Maryland divorce proceeding at this hearing.

On November 20, 2007 and November 30, 2007, petitioner, through attorney Bensinger, filed motions to dismiss the JDR case for lack of jurisdiction. The motions were heard on January 17, 2008. Petitioner was represented by attorney Bensinger at that hearing. Because there was no dispute over the underlying material facts, no testimony was needed or taken. The motions were denied and the court continued to exercise jurisdiction over the matter. (Pet. App. 1). The GAL attended this hearing.

Petitioner Claims that Georgia Should Have Jurisdiction. In late January 2008, petitioner took the child to Atlanta, Georgia in violation of the September 5, 2007 order, allegedly because petitioner's mother was ill. While in Georgia, petitioner retained counsel, who identifying herself as a Georgia guardian

ad litem, made a filing with the Virginia JDR court recommending that Georgia be the jurisdiction in which custody and visitation rights were determined. At the noticed February 8, 2008 hearing, petitioner appeared in court represented by attorneys Michael Miller and Elizabeth Latuseck, having left the child in Georgia. The JDR court issued an order that the mother return the child to Dr. Pfeiffer by February 10, 2008 and ordered that petitioner cooperate with a psychological evaluation. (Resp. App. 10). The JDR court found that petitioner had not cooperated with the GAL who was present at the hearing. The case was continued to April 18, 2008.

Petitioner returned the child to respondent on February 10, 2008 as ordered. Two days later she presented the police in the District of Columbia with the now partially superseded September 5, 2007 temporary custody order to have the police take the child from Dr. Pfeiffer and give her physical custody over the child. Petitioner did not disclose to the police that the court had ordered that she return the child to Dr. Pfeiffer.

The JDR Court Grants Temporary Physical Custody to the Father. At a hearing on February 21, 2008, the JDR issued an order changing temporary physical custody from petitioner to Dr. Pfeiffer. (Resp. App 14). Petitioner was represented by attorney John Drury. The GAL was present. The custody case was continued to April 18, 2008. A rule to show cause was set for April 8, 2008 because petitioner had not complied with previous orders. (Resp. App. 18).

The JDR Court Holds a Lengthy Hearing on Petitioner's Contempt on April 8, 2008. On April 8, 2008, the JDR court held a hearing to determine whether the actions of the petitioner constituted contempt. The petitioner appeared represented by attorney Michael Callahan. The hearing transcript runs 147 pages; petitioner testified at length. The Court found the petitioner in contempt for taking the child to Georgia, for removing the child from the father's custody, and for failing to cooperate with court appointed personnel. After finding the petitioner in contempt, the court continued the case for disposition until it had a chance to review the psychological evaluation. It set a hearing for June 6, 2008. (Resp. App. 20).

Petitioner Improperly Uses an *Ex Parte* Hearing in Maryland to Temporarily Gain Custody, but Loses Custody After a Hearing on the Merits. On June 2, 2008, petitioner, after again taking her child in violation of a Virginia custody order, appeared at the Montgomery County Circuit Court alleging that her daughter had been abused and asking for a Protective Order to keep Dr. Pfeiffer from having custody. Petitioner concealed from the Maryland court the existence of the Virginia case, that a guardian *ad litem* had been appointed to represent the child, the extensive investigations which had been made in Virginia or the reports submitted by the GAL to the Virginia court. [3]

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[3] The failure to make these disclosures was a violation of Maryland Family Law Code §9.5-209, a portion of the Maryland Uniform Child Custody Jurisdiction and Enforcement Act, which requires that the initial pleading,

The Montgomery County Circuit Court issued an *ex parte* temporary protective order granting petitioner custody on June 2, 2008. A motion to vacate was filed and noticed for June 5, 2008. Pursuant to Maryland law, the child was interviewed by Montgomery County Child Protective Services.

At the hearing on June 5, 2008, petitioner, who had filed a response to the motion to vacate, failed to appear. Judge Craven, hearing the case, took testimony from Elizabeth Ann Hoffman, supervisor of the Child Sexual Abuse Investigation Unit for Montgomery County Child Protective Services (CPS). Ms. Hoffman, in addition to noting that interviews with the child showed no indication of abuse, testified as follows about the behavior of the petitioner at her offices near the courthouse on the morning of the scheduled hearing:

> She was extremely inappropriate in the confines of our office and she – to the point of alarming me. Now, Your Honor, I've been doing this work for 13 years and I am not an alarmist. I see lots of bizarre behavior from parents, lots of highly, you know agitated individuals, hostile people, that's what we do.

---

or an attached affidavit, in any child custody proceeding state whether the party bringing the action has participated in any other proceeding concerning the custody of or visitation with the child and knows of any other proceeding that could affect the proceeding being filed. To the extent that the June 2, 2008 filing might be deemed a petition for relief from abuse, Maryland Family Law Code §4-504 also requires disclosure of previous and pending actions between the parties.

> This women's behavior concerned me to the point that I felt it, that I need the Court to help me protect this child.
>
> We missed Ms. King by, and when I say we, Ms. Catron and I had decided to intervene and remove, change the location of the child versus the mother. When we, after we made that decisions, she had left the office by, say 90 seconds. She knew she had to be in court this morning and what she told my social worker was that "I'm an adult, I can ---"

Transcript of Hearing, *Ariel R. King v. Michael Pfeiffer*, Case No. 70620-FL (Montgomery Circuit Court. June 5, 2008) p. 13.

After hearing this testimony and similar testimony from Janel Catron, the social worker who interviewed the child, the Court vacated the temporary protective order and dismissed the case. The Court found that petitioner knew about the hearing and that there was reason to believe the testimony she gave to secure the initial temporary order was false.[4]

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[4] In a lengthy footnote (Pet. at 7, fn. 6), petitioner asserts that the June 5, 2008 Montgomery Circuit Court hearing was also defective and that the June 2, 2008 order was "prematurely quashed." It is clear that petitioner set up the initial June 2, 2008 *ex parte* hearing and utilized the "nuclear option" of falsely alleging sexual abuse as a stratagem to derail the June 6, 2008 hearing in Virginia. The testimony of the two Montgomery County Child Protective Service personnel puts to rest any allegations of improper behavior by Dr. Pfeiffer. It also established that petitioner was aware of the June 5, 2008 hearing and chose

Petitioner, Having Abducted Her Child, Chooses Not to Appear at the Scheduled June 6, 2008 Hearing. By the time of the scheduled June 6, 2008 hearing, petitioner had improperly kept the child for five days, in violation of the February 21, 2008 Custody Order. She failed to appear at the hearing. The Petition characterizes the hearing as "ex parte" and without proper notice. Not only was notice of the hearing given at the April 8, 2008 hearing and contained in the order, but petitioner obviously knew about it because she filed a Motion to Continue the hearing on June 3, 2008. (Resp. App. 22). The bases for her motion to continue were a pending mandamus petition to the Virginia Supreme Court and a Maryland investigation into alleged sexual abuse by the father. The first was invalid as mandamus does not lie to contest jurisdiction. The second was found to be without merit by both the Maryland court and the Montgomery County CPS.

The petitioner, who had appeared at six hearings represented by counsel, would have this court believe that her failure to appear before the court on June 6, 2008, when she was scheduled to be sentenced for contempt of court, somehow made the entire JDR process *ex parte* and transformed her into a *pro se* litigant whose rights were abused. The petitioner also asserts that this process victimized her daughter, ignoring the fact that the child – whose needs are properly the focus of a custody dispute – was represented at the June 6, 2008 hearing by the GAL

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not to attend. In fact, she bolted from the CPS facility as soon as she realized that the professionals there had doubts about her fitness to care for the child.

and that the court had, by this time, extensive reports from the court investigator and the GAL.

The Court, reviewing these reports and petitioner's continuing contumacious and erratic behavior, awarded sole custody of the child to Dr. Pfeiffer. The Court issued two orders. In one of them, it found that "[M]other has abducted child and mother exhibits behavior to Montgomery County CPS which made the agency concern for child's safety."[5] (Resp. App. 31). In light of petitioner's behavior, this was a completely reasonable decision. The GAL agreed to the order. The order did not, as the Petition asserts repeatedly, terminate parental rights. It gave Dr. Pfeiffer sole custody and denied petitioner access to the child until petitioner had availed herself to the court, purged herself of her contempt and completed a psychological evaluation.

Petitioner remained a fugitive with the child until June 16, 2008 when she was apprehended in New York. Petitioner's claim that she was merely seeking medical evaluation for her child in New York is without credibility.[6] Taking a purportedly ill child on the road for more than a week rather than immediately

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[5] Petitioner, unaccountably, did not include this order in its appendix, but did include the other order issued that day which does not contain the explanatory material. (Pet. App. 2.)

[6] A complete examination of the child's medical condition and refutation of claims that Dr. Pfeiffer ignored his daughter's medical condition is found in the December 2, 2009 decision of the District of Columbia Superior Court in *King v. Pfeiffer*, DR Case No. 2009 DRB 1167. (Resp. App. 38).

to a medical facility hardly qualifies as being in the interests of the child. Petitioner lived within miles of a half dozen world-class medical institutions where she could have sought evaluation or treatment for the child. Petitioner was fleeing to avoid the existing and prospective rulings of the JDR.[7] If petitioner felt the child needed medical care which was not being provided, she could have raised the issue with either the GAL or the court.

II. Petitioner's Untimely Appeal of the JDR Order Is Rejected By The Circuit Court at a Noticed and Scheduled Hearing.

Throughout the petition, it is properly asserted that the June 6, 2008 order was a "final order." Nearly four months later, on September 26, 2009, petitioner filed a motion for a *de novo* review in the Circuit Court. Va. Code §16.1-296[8] states that such an appeal shall be

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[7] Petitioner claims she was "forced to plead guilty to parental kidnapping." Pet. at 8, fn 6. Petitioner was sentenced on April 6, 2009 for the felony of child abduction out of the state. *State v. King*, Nos. 111333 Crim. and 111512 Crim. She was represented by attorneys Alex Foster, David Helfrey, and Roy Morris. She was asked by the court "Is anybody forcing you or threatening you to plead guilty this afternoon?" She answered "No, sir."

[8] In her brief, petitioner relies on Va. Code §16.1-106, Appeals from court not of record in civil cases. Pet App. 21. The Virginia Supreme Court has held that appeals from JDR court are governed by Va. Code §16.1-296. *Sasson v. Shenar*, 276 Va. 611, 626 fn. 10, 667 S.E.2d 555, 563 (2008). The statute provides "[F]rom any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be

filed "within **ten days** after such order or judgment." [9] The time for appeal expired on June 16, 2008. The September 2, 2008 motion could not be considered a motion for a new trial or rehearing such that an appeal could trigger a *de novo* review of the June 6, 2008 hearing. Pursuant to Va. Code §16.1-97.1, a new trial of a judgment of a district court must be filed within thirty days of the judgment and ruled on within forty-five days of the judgment.

On receiving the untimely notice of appeal, counsel for Dr. Pfeiffer filed a motion to dismiss on October 10, 2008. (Resp. App. 33). The motion was served on petitioner and set, in accordance with the Rules of the Supreme Court of Virginia, to be heard at the next regular Friday motion's day, which was October 17, 2008.[10] Petitioner chose not to appear. The matter was heard in open court and as the defect in the appeal being facially apparent, the appeal was dismissed.

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taken to the circuit court within 10 days from the entry of a final judgment.." Both provisions require an appeal within ten days.

[9] Petitioner apparently contends that the September 26, 2008 Notice of Appeal was timely because it was filed within ten days of the September 16, 2008 denial (Pet. App. 12) of the September 2, 2008 motion filed by Dr. King. But the time to appeal the June 6, 2008 order had expired on June 16, 2008 and could not be revived by a motion filed seventy-eight days after the order had become final and unappealable.

[10] Motions may be brought before the Circuit Court on seven days written notice. Rule 4:15(b) of the Rules of the Supreme Court of Virginia.

III. Petitioner's Appeals to the Virginia Court of Appeals and Virginia Supreme Court Are Properly Rejected.

Petitioner filed a Notice of Appeal with the Virginia Court of Appeals on October 19, 2008. After the record was received by the appellate court, petitioner received a notice that the filing deadline or the opening brief was February 23, 2009.

Rule 5:A:19(b)(1) of the Rules of the Supreme Court of Virginia requires that opening briefs shall be "filed in the office of the clerk of the Court of Appeals." Rule 5A:3(c) provides that any document required to be filed in the office of the clerk "shall be deemed to be timely filed if it is mailed postage prepaid to the Clerk of the Court of Appeals by registered or certified mail and if the official receipt thereof be exhibited upon the demand of the clerk or any party and it shows mailing within the prescribed time limits." (Resp. App. 53).

Petitioner asserts that she mailed the brief on February 23, 2009 by regular mail, not certified or registered mail. The court received the brief on February 25, 209 and rejected it as untimely in an order dated March 17, 2009. Respondent played no role in the rejection. A petition for rehearing was denied.

The rule is clear and direct. Petitioner did not follow it.

A subsequent appeal was filed with the Virginia Supreme Court. Va. Code §17.1-410(A)(3) generally prohibits appeal to the Virginia Supreme Court of final decisions of the Virginia Court of Appeals in custody cases. The Virginia Supreme Court has the option of

accepting such otherwise unappealable cases if it "involves a substantial constitutional question as a determinative issue or matters of significant precedential value." Va. Code §17.1-410 (B). The dismissal of the petition cites both provisions.

REASONS TO DENY THE PETITION

As the overview of the record presented above makes clear, this is a case involving extraordinarily damaging behavior by the petitioner, including child kidnapping and baseless claims of child sexual abuse. It is not an example of an "epidemic problem" in state family law courts. Nor is this a case in which the state law procedure discriminates against *pro se* parties. Petitioner was represented by a phalanx of lawyers before the JDR court. Her failure to appear for sentencing on contempt did not convert this to a *pro se* case. Furthermore, the so-called lethal combination of court orders terminating parental rights and *capias* orders threatening imprisonment is not a violation of due process. Courts have the right to hold litigants in civil contempt when they have been adjudicated to have violated court orders. The enforcement of contempt orders is a proper judicial function necessary for the administration of justice, not a violation of due process.

A. Petitioner Was Not Denied Equal Protection in Seeking an Appeal.

Petitioner asserts that *M.L.B. v. S.L.J.*, 519 U.S. 102, 117 S.Ct. 555, 136 L.Ed.2d (1996) stands for the proposition that the state may not unfairly erect barriers to appeal. She claims that because she was *pro*

se and because she was subject to imprisonment for her contempt, constitutionally impermissible barriers were present.

M.L.B. is not relevant to this case. *M.L.B.* dealt with economic barriers. An indigent mother whose parental rights had been terminated was denied an appeal because she could not pay for a required transcript. Her application to appeal *in forma pauperis* was rejected.

The Supreme Court held that where an appeal was allowed, the state could not "cut off appeal rights for indigents while leaving open avenues of appeal for more affluent persons." 519 U.S. at 111, 17 S.Ct. at 561 quoting *Ross v. Moffitt*, 417 U.S. 600, 607, 94 S.Ct. 2437, 2442, 41 L.Ed.2d 341 (1974). There are no constitutionally infirm economic barriers present here.[11] Unlike M.L.B., petitioner did not seek to be treated *in forma pauperis* or submit to an examination of her finances.

Furthermore, *M.L.B.* dealt with a very specific proceeding, the termination of parental rights, which the court described as "a unique kind of deprivation." 519 U.S. at 118, 117 S.Ct. 565 *quoting Lassiter v. Department of Social Servs. of Durham Cty.*, 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 650 (1981). But the court carefully distinguished termination of parental rights "from other domestic relations matters such as divorce, paternity, **and child custody**." 519 U.S. at

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[11] In Virginia, *de novo* appeal of most JDR rulings is exempt from the posting of an appeal bond. Va. Code §16.1-296(H).

127, 117 S.Ct at 569. The clear implication is that the equal protection analysis applied in *M.L.B.* would not apply to such cases.

Although petitioner describes the June 6, 2008 JDR order as a "termination" of her parental rights throughout the petition, that is not what occurred. Petitioner lost custody, not her parental rights. The June 8, 2008 order clearly established a regime by which petitioner could regain some access to her child by availing herself of the court, and completing a psychological evaluation.[12] There was no termination of parental rights as occurred in *M.L.B.* Petitioner retains the right to apply for a change in the order based on change in circumstances and, in fact, has done so.

There are no equal protection issues here and *M.L.B.* does not apply. Petitioner was not *pro se*, she had six lawyers. She presented no evidence to any court that she was impoverished. The case did not result in termination of parental rights, but rather an award of custody with justifiable prerequisites to the resumption of visitation rights.

B. Petitioner Was Not Deprived of Due Process Because She Was Facing Penalties for Contempt.

The fact that petitioner was subject to penalties for

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[12] By contrast, the Virginia parental rights termination statute, Va. Code §16.1-283 would provide no avenue of return to custody. After termination, the parent "becomes a legal stranger to the child." *Shank v. Department of Social Services*, 217 Va. 506, 509, 230 S.E.2d 454, 457 (1976).

contempt arising from her repeated violations of court orders does not implicate either equal protection or due process issues. Petitioner describes a "Catch-22" situation because she purportedly could not exercise her rights to a *de novo* appeal because she would have been arrested. But this is a situation which applies to anyone who has been convicted of an offense or held in contempt. Petitioner cites not a single case to support her position that she was deprived of due process because she was subject to arrest.[13]

Petitioner would have the Court believe that because she fled the jurisdiction she should have more rights than if she had appeared at the June 6, 2008 hearing and been sentenced for contempt. The *capias* orders of which petitioner complains simply commanded her appearance before the JDR court, by arrest if necessary. Bench warrants are issued every day by trial courts. They do not deprive litigants of due process. They command the appearance of the absent party at a hearing where they will be accorded due process. The *capias* orders did not impose a sentence on petitioner. Any sentence would have come after the hearing and would have been subject to appeal. The appropriate course when faced with a contempt order with which one disagrees is to comply and appeal. *Leisge v. Leisge*, 224 Va. 303, 307, 296 S.E.2d 538, 540 (1982); *Robertson v. Commonweath*, 181 Va. 20, 25 537 S.E 2d 352, 359 (1943).

The procedure by which petitioner was adjudicated

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[13] In the instant case, petitioner was able to file her Notice of Appeal without being imprisoned. She lost her right to a *de novo* appeal because she made a late filing.

to be in contempt did not violate due process. The key components of due process are notice and an opportunity to be heard. *Moore v. Smith*, 177 Va. 621, 626, 15 S.E.2d 48, 49 (1941). Where a party has the opportunity to present testimony but chooses not to do so, there is no denial of due process. *Venable v. Venable*, 2 Va. App. 178, 182, 342 S.E.2d 646, 649 (1986).

C. The JDR Decision Was Not Arbitrary, Contained Findings of Fact, and Was Based on Substantial Evidence.

By omitting the June 6, 2008 order (Resp. App. 31) in which the JDR court stated that petitioner had abducted her child and the Montgomery County Child Protective Services officials had expressed concern for the child's safety, petitioner makes the claim the JDR order "was arbitrary, without reason or finding of fact" (Petition 18), "was a one line order with no finding of substantial evidence" (Petition 21) and "was without any evidentiary hearing of record." (Petition 21).

The JDR court made findings of fact in the order that petitioner did not place in her appendix. The court had available to it extensive testimony, including testimony by the petitioner while represented by counsel, which had taken place in the six prior hearings. The findings related to abduction were admitted to be correct when petitioner pled guilty to felony child abduction.

D. Petitioner Was Not Denied Any Due Process Rights When Her Untimely Appeal Was Dismissed by the Circuit Court.

The time to appeal the June 6, 2008 order expired on June 16, 2008. Va. Code 16.1-296. The failure to file a timely appeal is jurisdictional. The Circuit Court was therefore without jurisdiction of any kind. *Fairfax County Department of Human Development v. Donald*, 251 Va. 227, 229-230, 467 S.E.2d 803, 804 (1996).

E. The Denial of the Appeal to the Court of Appeals Was Appropriate and Not a Denial of Due Process.

Rule 5A:3(c) could not be more clear. The party filing a brief must send it by certified or registered mail if the document will not be received in the office of the clerk by the deadline. Petitioner, who has a Ph.D., should have been able to understand this language.

The Virginia Court of Appeals has long had a policy of requiring strict adherence to filing deadlines, as do most appellate courts. The Court of Appeals has previously addressed this issue. *Long v. Commonwealth*, 7 Va. App. 503, 506, 375 S.E.2d 368, 369 (1988). ("Since the Rule specifically lists the appropriate mailing methods without mentioning first class mail as an alternative, we must presume that method is intended to be excluded.") *Accord*, *Haywood v. Commonwealth*, 15 Va. App. 297, 298, 4223 S.E.2d 202, 203 (1992)

Other than reference to her suspect *pro se* status, petitioner had given no basis to support the position

that strict application of appellate deadlines is a denial of due process. The rules governing appeal procedures are mandatory and "compliance with them is necessary for the orderly, fair and expeditious administration of justice." *Condrey v. Childress*, 203 Va. 755, 757, 127 S.E.2d 150, 152 (1962) quoting *Lawrence v. Nelson*, 200 Va. 597, 598, 106 S.E.2d 618, 620 (1959).

F. The Rights of the Child Were Respected and Protected.

Petitioner asserts that her six year old child is the "victim" of the alleged constitutional violations and two of the "Questions Presented" relate to purported denials of the child's constitutional rights. The child is, of course, not a party to this appeal and the petitioner never describes in just what context the child's rights are being advanced by this litigation.

The fact is that the child was represented through this process by a guardian *ad litem*. The guardian *ad litem* is required to have training in the roles, responsibilities and duties of that position, and a background demonstrated proficiency in juvenile law. Va. Code §16.1-266. His or her primary duty is "to represent vigorously the infant ... fully protecting that individual's interests and welfare." *Stanley v. Dep't of Social Services*, 10 Va. App. 596, 603, 395 S.E.2d 199, 202-03 (1990), *aff'd by Stanley v. Fairfax County Dept. Of Social Services*, 242 Va. 60, 405 S.E.2d 621 (1991). The GAL participated fully in the case before the JDR and concurred in its ruling.

Both the JDR and the Montgomery County Child Protective Services determined that the mother was

not acting in the best interests of the child. The District of Columbia Superior Count, in Judge Mitchell-Rankin's December 2009 opinion, found that respondent provided the child with excellent medical care and that petitioner's claims of neglect were unfounded. (Resp. App. 50-51).

To the extent that the child has been deprived of access to her mother, it is not because of some constitutional violation. Petitioner has always carried the keys to resolve this matter in her own pocket. She has only to avail herself of the JDR and complete her psychological evaluation. This she steadfastly refuses to do, instead multiplying litigation. There is no constitutional violation,

CONCLUSION

The petitioner was well represented below. Numerous hearings were held. She chose not to attend the critical June 6, 2008 hearing because she was in the process of flouting the JDR court's order while committing felony child abduction. She is not *pro se*. Her parental rights were not terminated. She was not denied the right to appeal. Her appeals were untimely and properly denied. No constitutional issues have been raised. The petition for certiorari should be denied.

Respectfully Submitted,

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Counsel for Respondent

* Counsel of Record

December 21, 2009

VIRGINIA:

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT FOR THE COUNTY OF ARLINGTON

Case No.(s): J-31848-01

Michael H. Pfeiffer **Petitioners,**

v.

Ariel R. King **Respondents.**

In re: [Name Of Minor Child Omitted]

INITIAL ORDER

THIS ORDER IS BINDING UPON YOU. You should read and understand the entire order. If you do not understand the order you should seek legal counsel. Failure to follow the terms of this order may result in you being found in contempt of court.

Because matters of support and/or custody of children are pending in this court, all parties are **ORDERED** as follows:

GETTING AN ATTORNEY If you wish to be represented by an attorney, your attorney must notify the Court of his or her representation within 14 days of your advisory hearing. If you are unable to retain an attorney within this time, you must notify the Court before the above date of when you expect to get

counsel. A lengthy extension will not be granted. You must give the attorney a copy of this order.

CONTINUANCE POLICY (*See also written policy*)

1) Continuances are not favored.

2) Continuances may be granted upon a written request stating a good reason for the continuance.

3) Continuances will not be granted if the request is not in writing or does not show a good reason for the continuance.

4) The following are *not* good reasons for a continuance:

   a. The failure to hire an attorney within 14 days of service.

   b. Lack of preparation.

   c. Agreement of the parties without further reason.

   d. The failure to timely request discovery, home study, witness subpoenas, or professional reports.

RULES OF CONDUCT IN CUSTODY CASES

1) If prior court orders exist which determine custody and support of the minor child(ren), the parents are required to abide by such prior court orders.

2) Unless specifically contradicted by prior court orders both parents are the joint

custodians of the child(ren) are ordered to conduct themselves as follows until further order of this court:

a. Each parent shall keep the other parent notified of his or her address and telephone number and permit the other party to have reasonable contact with the child(ren) unless it is absolutely necessary to prevent the child(ren) or a party from harm. If either parent denies the other access to the child(ren) and the Court finds such denial to be unreasonable, this will be a strong factor against that parent retaining custody of the child(ren).

b. The child(ren) shall continue to attend their usual school and child-care provider unless there exists a compelling reason to do otherwise.

c. The parties shall continue in effect all insurance policies, including, but not limited to, health, life, automobile, and homeowner's insurance for the duration of the proceedings or further order of Court.

d. Each parent shall consult the other, if possible, of important health care or educational issues involving the child(ren). Both parents may have access to the child(ren)'s school and medical records.

e. Neither parent shall submit the child(ren) to psychiatric or physiological examination, evaluation, or treatment without giving written notice to the other parent. [Both parents and child ordered to participate in a custody evaluation.]

f. Both parents have the legal duty to provide monetary support for the child(ren). Until the court enters a child support order, both parents shall contribute to the child(ren's) sport to the best of their ability. [Father ordered to pay temporary child support in the amount of $500.00.]

g. No party shall remove the child(ren) from the State of Virginia without the written consent of the other party or order of this court until the hearing. [Child is allowed to travel within metropolitan area. Mother allowed to travel with child to visit with family in New Jersey, Atlanta, and Pennsylvania to visit friend.]

h. No party shall downgrade the other party in front of the child(ren).

a.) Temporary visitation every Wednesday from 6:00 p.m. to Thursday 8:00 a.m. and every other Saturday from 10:00 A.M. to Sunday at 10:00 A.M. (to commence on 9/6/2007.) and every other Sunday from 10:00 a.m. to

Monday at 8:00 a.m. to commence on 9/16/2007. Overnight visitation will not commence until child's German passport is submitted to the court.

i. Both parents ordered to take a parenting class

j. Court orders CSU to conduct home visits of both parents and write a custody evaluation.

ABUSIVE CONDUCT

Neither party shall harass the other party, call or appear at the other parties' place of employment except as necessary for the well being of the child(ren). All parties are required by law to refrain from any abuse against each other or the child(ren).

RECONCILIATION

The parties or their attorneys are hereby directed to promptly notify the Court in writing of a reconciliation.

YOUR COMPLIANCE WITH THIS ORDER IS MANDATORY.

Order Entered: September 5, 2007

Judge: Esther Wiggins Lyles

[cc: all parties]

ORDER Case No.: JJ031848-01-00
Commonwealth of Virginia

ARLINGTON J&DR COURT Juvenile and Domestic Relations District Court COMMONWEALTH OF VA
V./*In re:* [Name Of Minor Child Omitted]

THE FOLLOWING PARTIES WERE PRESENT:

☐ Juvenile ☐ Attorney: .....

☐ Probation Officer [Illegible]

☐ Guardian *ad Litem* .....

☐ Father ☐ Mother ☐ Guardian: .....

☒ Petitioner/Complainant ☒ Attorney: S. O'CONNELL

☒ Respondent/Defendant ☒ Attorney: D. DANNENBAUM

☐ Commonwealth's Attorney: ..... ☐ .....

Type of Case: CUSTODY

☐ Felony ☐ Misdemeanor ☐ CHINS ☒ Custody ☒ Visitation ☐ Support ☐ Foster Care ☐ Other

Type of Hearing:

☐ Determination/Appointment of Counsel
☐ Detention Hearing ☐ Transfer Hearing
☐ Adjudicatory Hearing ☐ Disposition Hearing
☐ Continuance ☐ Review ☐ Preliminary Hearing
☐ Show Cause ☐ Trial ☐ Motion .....
☒ ADVISORY .....

PLEA: .....

FINDINGS OF THE COURT:

.....

IT IS ORDERED THAT:

PARTIES ADVISED. INITIAL ORDER ENTERED. MUTUAL DISCOVERY ORDERED.

COURT ORDERS COURT SERVICE UNIT TO CONDUCT A CUSTODY EVALUATION. COST TO BE DIVIDED BETWEEN THE PARTIES.

COURT ORDERS BOTH PARENTS TO TAKE A PARENTING CLASS AND PARTICIPATE IN A CUSTODY EVALUATION BY A QUALIFIED EXPERT.

TEMPORARY VISITATION AND CHILD SUPPORT ARE ADDRESSED IN INITIAL ORDER.

This case is continued to: 11/08/2007 @ 11:00 AM

09/05/2007 /s/ Esther Wiggins Lyles

DATE JUDGE

ORDER Case No.: JJ031848-01-00
Commonwealth of Virginia

ARLINGTON J&DR COURT Juvenile and Domestic Relations District Court COMMONWEALTH OF VA
V./*In re:* [Name Of Minor Child Omitted]

THE FOLLOWING PARTIES WERE PRESENT:

☐ Juvenile ☐ Attorney:

☒ Probation Officer MICHELLE WOOD

☒ Guardian *ad Litem* DEBORAH OLIN

☐ Father ☐ Mother ☐ Guardian:

☒ Petitioner/Complainant ☒ Attorney:
SEAN O'CONNELL

☒ Respondent/Defendant ☒ Attorney:
RAY BENZINGER

☐ Commonwealth's Attorney: ☐

Type of Case: CUSTODY

☐ Felony ☐ Misdemeanor ☐ CHINS ☐ Custody
☐ Visitation ☐ Support ☐ Foster Care ☐ Other

Type of Hearing:

☐ Determination/Appointment of Counsel
☐ Detention Hearing ☐ Transfer Hearing
☒ Adjudicatory Hearing ☐ Disposition Hearing
☐ Continuance ☐ Review ☐ Preliminary Hearing
☐ Show Cause ☐ Trial ☒ Motion TO CONTINUE
☐

PLEA:

FINDINGS OF THE COURT:

.....

IT IS ORDERED THAT:

GUARDIAN AD LITEM'S MOTION TO CONTINUE IS GRANTED OVER RESPONDENT'S OBJECTION.

COURT ORDERS THAT THE CHILD REMAINS IN THIS COUNTRY AND IS NOT ALLOWED TO TRAVEL OUTSIDE OF THE UNITED STATES. IF MOTHER LEAVES COUNTRY FOR WORK, CHILD SHALL BE LEFT WITH HER FATHER AND FATHER ORDERED TO MAINTAIN CHILD IN HER GERMAN SCHOOL.

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This case is continued to: 02/08/2008 10:00 AM

11/08/2007 /s/ Esther Wiggins Lyles

DATE JUDGE

ORDER Case No.: JJ031848-01-00
Commonwealth of Virginia

ARLINGTON J&DR COURT Juvenile and Domestic Relations District Court COMMONWEALTH OF VA
V./*In re:* [Name Of Minor Child Omitted]

THE FOLLOWING PARTIES WERE PRESENT:

☐ Juvenile ☐ Attorney:

☒ Probation Officer MICHELLE WOOD

☒ Guardian *ad Litem* DEBORAH OLIN

☐ Father ☐ Mother ☐ Guardian:

☒ Petitioner/Complainant ☒ Attorney: S. O'CONNELL

☒ Respondent/Defendant ☒ Attorney: MICHAEL MILLER AND LATUSEK

☐ Commonwealth's Attorney: ☐

Type of Case: CUSTODY

☐ Felony ☐ Misdemeanor ☐ CHINS ☒ Custody ☐ Visitation ☐ Support ☐ Foster Care ☐ Other

Type of Hearing:

☐ Determination/Appointment of Counsel
☐ Detention Hearing ☐ Transfer Hearing
☐ Adjudicatory Hearing ☐ Disposition Hearing
☐ Continuance ☐ Review ☐ Preliminary Hearing
☐ Show Cause ☐ Trial ☐ Motion
☐

PLEA:

FINDINGS OF THE COURT:

IT IS ORDERED THAT:

CASE CONTINUED BECAUSE CHILD IS OUT OF THE STATE AND THE PSYCHOLOGICAL EVALUATION WAS NOT COMPLETED AND MOTHER DID NOT COOPERATE WITH THE GAL.

MOTHER ORDERED TO RETURN THE CHILD BACK TO THE FATHER WITHIN 48 HOURS BY 2/10/08 AT 3:00 p.m. PARTIES ARE ORDERED TO COOPERATE WITH A FULL PSYCHOLOGICAL EVALUATION. MOTHER ORDERED TO COOPERATE WITH THE GAL AND PSYCHOLOGICAL EVALUATION.

This case is continued to: 04/18/2008 10:00 AM

02/08/2008 /s/ Esther Wiggins Lyles

DATE JUDGE

ORDER Case No.: JJ031848-01-01
Commonwealth of Virginia

ARLINGTON J&DR COURT Juvenile and Domestic Relations District Court COMMONWEALTH OF VA
V./*In re:* [Name Of Minor Child Omitted]

THE FOLLOWING PARTIES WERE PRESENT:

☐ Juvenile ☐ Attorney:

☒ Probation Officer MICHELLE WOOD

☒ Guardian *ad Litem* DEBORAH OLIN

☐ Father ☐ Mother ☐ Guardian:

☒ Petitioner/Complainant ☒ Attorney: S. O'CONNELL

☒ Respondent/Defendant ☒ Attorney:
MICHAEL MILLER AND LATUSEK

☐ Commonwealth's Attorney:
☒ REICHHARDT, ESQ.

Type of Case:
MOTION/PSYCHOLOGICAL EVALUATION FEES

☐ Felony ☐ Misdemeanor ☐ CHINS ☐ Custody
☐ Visitation ☐ Support ☐ Foster Care ☐ Other

Type of Hearing:

☐ Determination/Appointment of Counsel
☐ Detention Hearing ☐ Transfer Hearing
☐ Adjudicatory Hearing ☐ Disposition Hearing
☐ Continuance ☐ Review ☐ Preliminary Hearing
☐ Show Cause ☐ Trial ☐ Motion
☐

PLEA:

FINDINGS OF THE COURT:

.....

IT IS ORDERED THAT:

MOTION TO WITHDRAW DR. LANE IS HEREBY GRANTED.

.....

This case is continued to: .....

02/08/2008 /s/ Esther Wiggins Lyles

DATE JUDGE

[Amended]
ORDER FOR CUSTODY/ VISITATION GRANTED TO INDIVIDUAL(S)
Commonwealth of Virginia
VA. CODE §§ 16.1-278.15, 20-124.2

Case No.: JJ031848-01-07

02/21/2008
DATE OF HEARING

ARLINGTON J&DR COURT
Juvenile and Domestic Relations District Court

In re: [Name Of Minor Child Omitted]
NAME OF CHILD

[Date Of Birth Omitted]
DATE OF BIRTH

Present: ☐ Father MICHAEL HERBERT PFEIFFER

☐ Mother ARIEL ROSITA KING

☐ Child

☒ Other MICHELLE WOOD, P.O.

☐ Other

☐ Father's attorney S. O'CONNELL

☐ Mother's attorney JOHN DRURY

☐ Guardian *ad litem* D. OLIN

☐ Attorney

☐ Attorney

The above-named child has been brought before this Court upon the filing of a written petition or motion concerning custody or visitation or for which transfer of custody is a dispositional alternative. Legal notice has been given to all proper and necessary parties. All

provisions of the Juvenile, and Domestic Relations District Court Law have been duly complied with in assuming jurisdiction over the child, and all determinations have been made in accordance with the standards set forth in Virginia Code § 16.1-278.4, § 16.1-278.5, § 16.1-278.6 or § 16.1-278.8 or § 16.1-278.15 and §§ 20-124.1 through 20-124.6.

HAVING CONSIDERED ALL RELEVANT AND MATERIAL EVIDENCE PRESENTED AND THE BEST INTEREST OF THE CHILD, THE COURT FINDS THAT THE CHILD IS WITHIN THE JURISDICTION OF THIS COURT AND FURTHER FINDS AND ORDERS THAT:

1. ☐ The parties are in agreement on the arrangement for the child's custody and visitation:

   ☐ as set forth in the attached document, which is incorporated.

   ☐ as set forth below.

2. **Custody/Visitation**

   TEMPORARY PHYSICAL CUSTODY IS GRANTED TO THE FATHER, MICHAEL HERBERT PFEIFER. MOTHER ALLOWED VISITATION WITH THE CHILD EVERY WEDNESDAY AND THREE WEEKENDS OUT OF THE MONTH AND WITH GIVING FATHER TWENTY-FOUR HOUR ADVANCE NOTICE, MOTHER CAN HAVE ANOTHER DAY DURING THE WEEK.

The basis for the decision determining custody or visitation has been communicated to the parties orally or in writing.

3. ☐ A **supplemental sheet** with additional findings and/or orders is attached and incorporated.

4. **Relocation.** Each party intending a change of address shall give 30 days advance written notice of such change of address to the court and other party, pursuant to Virginia Code § 20-124.5. Unless otherwise provided in this order, this notice shall contain the child's full name, the case number of this case, the party's new telephone number and new street address and, if different, the party's new mailing address. Unless otherwise provided in this order, the notice shall be mailed by first-class or delivered to this court and to the other party.

5. **Access to Records.** In accordance with Virginia Code § 20-124.6, neither parent, regardless of whether such parent has custody, shall be denied access to the academic or health records of that parent's minor child, unless otherwise provided in this order or, in the case of health records, if the minor's treating physician or clinical psychologist has made a part of the child's health record a written statement that furnishing to or review by the parent of such health records would be reasonably likely to cause substantial harm to the minor or another person.

6. This Order is ☐ FINAL ☒ TEMPORARY and a final hearing on this matter will be held on

04/18/2008 at 10:00 AM
DATE TIME

02/21/2008 /s/ Esther Wiggins Lyles
DATE JUDGE

ORDER Case No.: JJ031848-01-07
Commonwealth of Virginia

ARLINGTON J&DR COURT Juvenile and Domestic Relations District Court COMMONWEALTH OF VA
V./*In re:* [Name Of Minor Child Omitted]

THE FOLLOWING PARTIES WERE PRESENT:

☐ Juvenile ☐ Attorney: .....

☐ Probation Officer .....

☐ Guardian *ad Litem* .....

☐ Father ☐ Mother ☐ Guardian: .....

☒ Petitioner/Complainant ☒ Attorney:
SEAN O'CONNELL

☒ Respondent/Defendant ☒ Attorney:
J. DRURY

☐ Commonwealth's Attorney: ..... ☐ .....

Type of Case: .....

☐ Felony ☐ Misdemeanor ☐ CHINS ☐ Custody
☐ Visitation ☐ Support ☐ Foster Care ☐ Other

Type of Hearing:

☐ Determination/Appointment of Counsel
☐ Detention Hearing ☐ Transfer Hearing
☐ Adjudicatory Hearing ☐ Disposition Hearing
☐ Continuance ☐ Review ☐ Preliminary Hearing
☐ Show Cause ☐ Trial
☒ Motion FOR RULE TO SHOW ☐ .....

PLEA: .....

FINDINGS OF THE COURT:

.....

IT IS ORDERED THAT:

PETITIONER'S MOTION FOR RULE FOR FAILURE TO COMPLY WITH COURT ORDER THAT MOTHER PROVIDE VERIFICATION THAT A) SHE HAD MOVED BACK INTO THE AREA WITH AN ADDRESS B) WHERE SHE IS LIVING AND C) THAT SHE STARTED THE PSYCHOLOGICAL EVALUATION

COURT ORDERS PHYSICAL CUSTODY TO FATHER TONIGHT WITH MOTHER HAVING VISITATION EVERY WEDNESDAY AND THREE WEEKENDS OUT THE MONTH FROM FRIDAY AT 4:00 P.M. TO SUNDAY AT 4:00 P.M. MOTHER ALLOWED ADDITIONAL WEEKDAY VISITATION WITH 24 HOUR ADVANCE NOTICE TO THE FATHER.

CUSTODY EVALUATION BY A QUALIFIED EXPERT ORDERED AT THE MOTHER'S EXPENSE. PARTIES AND PROBATION OFFICER IS TO SUPPLY COURT WITH THREE PSYCHOLOGISTS BY 2/27/2008 AND COURT WILL CHOOSE.

CONTINUED FOR FOUR HOUR HEARING ON THE RULES.

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This case is continued to: 04/08/2008 12:00 PM

12/21/2008 /s/ Esther Wiggins Lyles

DATE JUDGE

ORDER Case No.: JA020404-04-00
Commonwealth of Virginia

ARLINGTON J&DR COURT Juvenile and Domestic Relations District Court COMMONWEALTH OF VA
V./*In re:* ARIEL R. KING

THE FOLLOWING PARTIES WERE PRESENT:

☐ Juvenile ☐ Attorney: .....

☒ Probation Officer MICHELLE WOOD

☒ Guardian *ad Litem* .....

☐ Father ☐ Mother ☐ Guardian: .....

☒ Petitioner/Complainant ☒ Attorney: S. O'CONNELL

☒ Respondent/Defendant ☒ Attorney: M. CALLAHAN

☐ Commonwealth's Attorney: ..... ☐ .....

Type of Case: FAILURE TO COMPLY WITH VISITATION/CUSTODY

☐ Felony ☐ Misdemeanor ☐ CHINS ☒ Custody ☒ Visitation ☐ Support ☐ Foster Care ☐ Other

Type of Hearing:

☐ Determination/Appointment of Counsel
☐ Detention Hearing ☐ Transfer Hearing
☐ Adjudicatory Hearing ☐ Disposition Hearing
☐ Continuance ☐ Review ☐ Preliminary Hearing
☐ Show Cause ☐ Trial ☐ Motion .....
☐ .....

PLEA: .....

FINDINGS OF THE COURT:

FOUND IN CONTEMPT (FAILURE TO PROVIDE VERIFICATION OF A) RETURNING TO THIS AREA B) HOME ADDRESS AND C) PSYCHOLOGICAL EVALUATION)

IT IS ORDERED THAT:

CONTINUED FOR DISPOSITION. COURT WOULD LIKE TO VIEW THE PSYCHOLOGICAL EVALUATION BEFORE DISPOSITION.

This case is continued to: 06/06/2008 10:00 AM

04/08/2008 /s/ Esther Wiggins Lyles

DATE JUDGE

VIRGINIA:

IN THE JUVENILE & DOMESTIC RELATIONS COURT FOR ARLINGTON COURT

MICHAEL H. PFEIFFER

Petitioner,

V. CASE NO. J-31848

ARIEL R. KING

Respondent.

IN RE: ARIANA LEILANI M. A. KING-PFEIFFER
DOB: 05/07/2003

EMERGENCY MOTION FOR STAY AND CONTINUANCE OF JUNE 6, 2008 HEARING PENDING SUPREME COURT REVIEW OF JURISDICTION

(Filed June 3, 2008)

Respondent Ariel King, PhD, filing pro se, hereby respectfully respectfully requests this Court stay the above captioned proceedings and related proceedings, and continue the upcoming hearing scheduled for June 6, 2008, in deference to the Supreme Court of the Commonwealth of Virginia pending review of subject matter jurisdiction. Given the nature of the legal review, Respondent believes that the court can grant this motion, sua sponte, without a hearing on an expedited basis. A suggested order is attached.

Wherefore, pursuant to Article VI of the Virginia Constitution, and Virginia Supreme Court Rules, 5:7,

et. seq., Respondent has filed and has now pending a Petition for Writ of Mandamus and Petition for Writ Prohibition in Case No. 080963 seeking that the high court direct:

1) the JDR court vacate its the initial custody (of September 5, 2007) and subsequent orders (including its orders of February 8, and 21, 2008) for lack of initial subject matter jurisdiction, and, lack of continuing subject matter jurisdiction, and that

2) the JDR court cease issuing any further orders, including any modifications of any child custody orders.[1]

Lack of Subject Matter Jurisdiction to Enter the Initial and Subsequent Orders In This Child Custody Case: As a case of first impression, the pending Petition seeks necessary conformity in the "home state" jurisdictional analysis of the UCCJEA in the Commonwealth of Virginia **(VA Code § 20-146.1, et. seq.)** with that of the Supreme Courts of other states, including Ohio, and Montana. ***Rosen v Celebrezze*, 2008 Ohio 853 (2008), *Stephens v. Fourth Judicial District Court*, 331 Mont. 40; 128 P.3d 1026 (2006).** The high courts have rejected any UCCJEA jurisdictional determination based on

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[1] As the Petition also explains, the various supreme courts have universally found that a petition for mandamus and prohibition is appropriate for addressing subject matter jurisdiction error in these types of UCCJEA situations – rather than the appeals process.

intent. Instead, the prevailing view is that a "bright line analysis" must be applied, requiring that that the statutory language of "immediately before the commencement of the child custody proceeding" could only be referring to any time during the six months preceding the filing of the child custody case.[2] Under that analysis, Maryland was – without any question – the home state of the child in the instant case when Petitioner filed his Petition on August 9, 2007 (well within six months of the child's having lived for well over six months in her home state of Maryland, specifically only 29 days after Respondent and the child sought housing on an emergency basis in Virginia after being abandoned by the Petitioner in Maryland – including being cut off from all financial resources).

The Petition explains that applying that uniform interstate interpretation of this multistate UCCJEA statute, dictates that Virginia did not have initial subject matter jurisdiction in this case, making null and void all orders entered in this proceeding.

Loss of Continuing Jurisdiction: The Petition also sets forth that even if the JDR court had initial subject matter jurisdiction when it entered the Initial Order on September 5, 2007, the JDR court lost any ongoing exclusive jurisdiction once no party remained

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[2] The uniform interstate interpretation of these Supreme Courts rejected the positions previously urged on this Court by Petitioner's counsel and the GAL.

in the state – since October 2007.[3] Also, once the ability was lost to enter an initial order – with no one in the state – the ability was lost to enter any modifications. Thus, from the date that no party was living in the Commonwealth, the Court was barred from entering modifications to any child custody determinations (which includes initial, temporary or final child custody orders). See, **VA Code § 20-146.1, et, seq.,** in particular **VA Code § 20-146.1 and 20-146.13**.

The Grant of A Temporary Stay and Continuance Is Appropriate Until the Higher Courts Resolve the Subject Matter Jurisdictional Issues: Deference to the Supreme Court is appropriate and required. A stay of these proceedings and continuance of any upcoming hearings will allow the Supreme Court (or any lower court it designates) to rule on this matter first under its original jurisdiction for prohibition and mandamus, and avoid the unnecessary "churn" of rulings, and waste of judicial resources in the Commonwealth of Virginia that other states have now successfully avoided. With it being undisputed that no party is or has lived in the Commonwealth since October 2007, the Supreme Court will, at a minimum, find – by strict statutory application and supporting caselaw – that under **VA Code § 20-146.13** dictates that the JDR court lost jurisdiction to

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[3] The exact date is not of concern, as no modifications of any child custody determinations were entered by the JDR court until February 8, 2008,

enter any further modifications to any child custody determinations (whether "initial," "temporary," or "permanent"). No party will be harmed by the grant of such a stay and continuance in deference to the Supreme Court. An expedited ruling was requested of the Supreme Court, thus it is expected that any delay in these proceedings will be relatively short and not be of any harm to any party.

* * *

WHEREFORE, Respondent respectfully requests that the JDR court provide the required deference to the Supreme Court and stay the above captioned proceeding, and – at a minimum – continue any upcoming hearings until the Supreme Court (or any court its designates) rules on the merits of the pending Petition.[4]

/s/ Ariel R. King
Ariel King (Pro Se)
11725 Greenlane Drive
Potomac, MD 20854
202 730 5111
Email: drarielking@yahoo.com

[4] As noted above, Respondent believes that the court can grant this motion, sua sponte, without a hearing on an expedited basis.

ORDER FOR CUSTODY/ VISITATION GRANTED TO INDIVIDUAL(S)
Commonwealth of Virginia
VA. CODE §§ 16.1-278.15, 20-124.2

Case No. JJ031848-01-00

06/06/2008
DATE OF HEARING

ARLINGTON J&DR COURT
Juvenile and Domestic Relations District Court

In re: [Name Of Minor Child Omitted]
NAME OF CHILD

[Date Of Birth Omitted]
DATE OF BIRTH

Present: ☒ Father MICHAEL HERBERT PFEIFFER

☐ Mother

☐ Child

☒ Other MICHELLE WOOD, PO

☐ Other

☒ Father's attorney SEAN W. O'CONNELL

☐ Mother's attorney

☒ Guardian *ad litem* DEBORAH OLIN

☐ Attorney

☐ Attorney

The above-named child has been brought before this Court upon the filing of a written petition or motion concerning custody or visitation or for which transfer of custody is a dispositional alternative. Legal notice has been given to all proper and necessary parties. All provisions of the Juvenile, and Domestic Relations

District Court Law have been duly complied with in assuming jurisdiction over the child, and all determinations have been made in accordance with the standards set forth in Virginia Code § 16.1-278.4, § 16.1-278.5, § 16.1-278.6 or § 16.1-278.8 or § 16.1-278.15 and §§ 20-124.1 through 20-124.6.

HAVING CONSIDERED ALL RELEVANT AND MATERIAL EVIDENCE PRESENTED AND THE BEST INTEREST OF THE CHILD, THE COURT FINDS THAT THE CHILD IS WITHIN THE JURISDICTION OF THIS COURT AND FURTHER FINDS AND ORDERS THAT:

1. ☐ The parties are in agreement on the arrangement for the child's custody and visitation:

   ☐ as set forth in the attached document, which is incorporated.

   ☐ as set forth below.

2. **Custody/Visitation**

   SOLE LEGAL AND PHYSICAL CUSTODY OF [Name Of Minor Child Omitted] IS GRANTED TO HER FATHER, MICHAEL H. PFEIFFER. THE MOTHER, ARIEL R. KING, SHALL NOT HAVE ANY CONTACT WITH THE CHILD UNTIL SHE AVAILS HERSELF TO THE COURT AND COMPLETES A PSYCHOLOGICAL EVALUATION.

.....

The basis for the decision determining custody or visitation has been communicated to the parties orally or in writing.

3. ☐ A **supplemental sheet** with additional findings and/or orders is attached and incorporated.

4. **Relocation.** Each party intending a change of address shall give 30 days advance written notice of such change of address to the court and other party, pursuant to Virginia Code § 20-124.5. Unless otherwise provided in this order, this notice shall contain the child's full name, the case number of this case, the party's new telephone number and new street address and, if different, the party's new mailing address. Unless otherwise provided in this order, the notice shall be mailed by first-class or delivered to this court and to the other party.

5. **Access to Records.** In accordance with Virginia Code § 20-124.6, neither parent, regardless of whether such parent has custody, shall be denied access to the academic or health records of that parent's minor child, unless otherwise provided in this order or, in the case of health records, if the minor's treating physician or clinical psychologist has made a part of the child's health record a written statement that furnishing to or review by the parent of such health records would be reasonably likely to cause substantial harm to the minor or another person.

6. This Order is ☒ FINAL ☐ TEMPORARY and a final hearing on this matter will be held on

..... at .....
DATE TIME

06/06/2008 /s/ Esther Wiggins Lyles
DATE JUDGE

[cc: Mother, Father, O'Connell, Olin, PO]

ORDER Case No.: JJ031848-01-00
Commonwealth of Virginia

ARLINGTON J&DR COURT Juvenile and Domestic Relations District Court COMMONWEALTH OF VA
V./*In re:* [Name Of Minor Child Omitted]

THE FOLLOWING PARTIES WERE PRESENT:

☐ Juvenile ☐ Attorney: .....

☒ Probation Officer MICHELLE WOOD

☒ Guardian *ad Litem* DEBORAH OLIN

☐ Father ☐ Mother ☐ Guardian: .....

☒ Petitioner/Complainant ☒ Attorney:
SEAN O'CONNELL

☐ Respondent/Defendant ☐ Attorney: .....

☐ Commonwealth's Attorney: ..... ☐ .....

Type of Case: CUSTODY

☐ Felony ☐ Misdemeanor ☐ CHINS ☒ Custody
☐ Visitation ☐ Support ☐ Foster Care ☐ Other

Type of Hearing:

☐ Determination/Appointment of Counsel
☐ Detention Hearing ☐ Transfer Hearing
☒ Adjudicatory Hearing ☐ Disposition Hearing
☐ Continuance ☐ Review ☐ Preliminary Hearing
☐ Show Cause ☐ Trial ☐ Motion ..... ☐

PLEA: .....

FINDINGS OF THE COURT:

.....

IT IS ORDERED THAT:

MOTHER HAS ABDUCTED CHILD AND MOTHER EXHIBITED BEHAVIOR TO MONTGOMERY CPS WHICH MADE THE AGENCY CONCERN FOR THE CHILD'S SAFETY.

SOLE LEGAL AND PHYSICAL CUSTODY OF THE CHILD IS GRANTED TO THE FATHER MICHAEL PFEIFFER AND NO CONTACT OF CHILD BY THE MOTHER UNTIL THE MOTHER AVAILS HERSELF OF THIS COURT AND UNDERGOES A COMPLETE PSYCHOLOGICAL EVALUATION.

.....

This case is continued to: .....

06/06/2008 /s/ Esther Wiggins Lyles

DATE JUDGE

VIRGINIA:

IN THE CIRCUIT COURT
FOR ARLINGTON COUNTY

ARIEL R. KING

Plaintiff,

v.

Case Number 08-1193
CASE NO. JJ-031848-01

MICHAEL H. PFEIFFER

Defendant.

NOTICE AND MOTION TO DISMISS

PLEASE TAKE NOTICE that that on or about this 17th day of October 2008 at 10:00 a.m. or as soon thereafter as may be heard, the Appellee/Petitioner, MICHAEL H. PFEIFFER by and through undersigned counsel, Sean W. O'Connell, Esquire, will respectfully move this Court to dismiss the instant case as moot and as in effect what is in effect an improperly filed appeal from the June 6, 2008 final custody Order and to dismiss the September 16, 2008 Appeal from the J&DR Court of that date as moot.

1. The underlying case in the J&DR Case No. JJ-031848-01 was a custody case in which the final order was entered on June 6, 2008 and was not appealed by the Respondent within 10 days of its entry or the subject of a motion for reconsideration heard within 45 day.

2. Additionally, on September 16, 2008 a hearing was held on 4 motions late and improperly filed in

the Arlington J&DR case brought by the Plaintiff along with the Motion of the Defendant requesting that the Clerk be directed to released the passport of the minor child Ariana King Pfeiffer which had been directed to surrendered for *pendente lite* purposes until custody had been decided. The motion she filed for the hearing she failed to attend were as follows:

i. Motion for Sanctions and to Strike Pleadings by Petitioner, Motion for Sanctions Against the GAL, Motion to Dismiss the GAL and Motion to Reopen Motion to Show Cases Regarding Christopher Lane, The GAL and 2-8-08 Order

ii. Motion to Set Aside Orders

iii. Motion to Quash Defective 9-16-08 Hearing Notices and Continuance of Hearing to a Later Date

iv. Motion to Recuse

3. On September 16, 2008, the Court having provided several weeks notice of the date of the hearing held said hearing and the Appellant, then Respondent, failed to attend or send a representative.

4. On September 16, 2008, the Court granted the Motion to direct the release of the passport and denied the remaining motions as the Appellant, then Respondent, was not present for her own motions.

5. The Clerk within the hour of granting the motion delivered the passport to the Father rendering the instant action moot as regards the passport.

6. The instant action is a transparent violation of the appellate procedure of J&DR cases and should therefore be dismissed without regard to the merits of the case for that cause and for failure to exhaust the available legal remedies.

7. The case was decided in a manner necessary to protect the child from a dangerously unstable parent.

8. The instant case was not served but rather was discovered only when placed upon the term day docket.

WHEREFORE Defendant request that the Court dismiss the instant law case and the J&DR appeal and award attorneys fees in the amount of $1,000.00 for the time necessary to bring forward this motion as the case and the appeal were was brought in violation of Virginia Code 8.01-271.1 and are vexatious.

MICHAEL H. PFEIFFER
By Counsel

/s/ Sean W. O'Connell

Sean W. O'Connell, Esquire
Virginia State Bar No. 27690
4113 Lee Highway
Arlington, Virginia 22207
Tel: (703) 558-0000
Counsel for
Defendant-Petitioner

[Certificate Of Service Omitted In Printing]

VIRGINIA:

IN THE CIRCUIT COURT
FOR ARLINGTON COUNTY

ARIEL R. KING

Plaintiff,

v.

Case Number 08-1193
CASE NO. J-31848-01

MICHAEL H. PFEIFFER

Defendant.

VERIFICATION

I, MICHAEL H. PFEIFFER, after being duly deposed and sworn, hereby verify that all the allegations stated in the attached Notice and Motion to Dismiss and its attachments are true and accurate to the best of my knowledge.

/s/ Michael H. Pfeiffer
MICHAEL H. PFEIFFER,
Petitioner

STATE OF VIRGINIA
County of Arlington to-wit:

Subscribed and sworn to before me this 10th day of October 2008.

/s/ William B. O'Connell
Notary Public

My Commission Expires:
August 31, 2009

WILLIAM B. O'CONNELL
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #107300
My Commission Expires
8/31/2009

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA DOMESTIC RELATIONS BRANCH FAMILY COURT

ARIEL ROSITA KING,	:	**DR Case No. 2009 DRB 1167**
Plaintiff,	:	**Judge Zinora M. Mitchell-Rankin**
vs.	:	**Calendar 3**
MICHAEL HERBERT PFEIFFER,	:	
Defendant.	:	

DECISION AND ORDER DENYING PLAINTIFF'S COMPLAINT FOR INJUNCTIVE RELIEF ON THE GROUNDS OF MEDICAL NEGLECT

This matter came before the Court on a Complaint for Negligent Treatment and Injunctive Relief. The Complaint for Negligent Treatment and Injunctive Relief was filed on April 21, 2009. The Plaintiff is Ariel Rosita King, Ph.D.[1] The Defendant, Dr. Michael Herbert Pfeiffer, filed a Counterclaim on May 13, 2009. The action involves the subject minor child, [Name Of Minor Child Omitted], who was born on [Date Of Birth Omitted]. The parties are the subject minor child's biological parents. The Defendant and the subject minor child are bona fide residents of the District of Columbia, and the District of Columbia

[1] Dr. King is not a medical doctor.

is the Home State of the subject minor child. [See, D.C. Code, Title 16, 4602.01(a)(1)] The hearings in this matter occurred on April 23, 2009, and August 5, 2009. All parties and respective counsel[2] were present at each proceeding and submitted evidence.

PROCEDURAL HISTORY

On June 6, 2008, Judge Esther Wiggins Lyles of the Juvenile and Domestic Relations Court of Arlington issued a Final Order awarding Dr. Pfeiffer sole legal and physical custody of the subject minor child. Pursuant to that Order, the Plaintiff was prohibited from having any contact with the subject minor child until she availed herself to the Court and completed a Psychological Evaluation. (Plaintiff's Exhibit No. 1) That Order remains in full force and effect. (Defendant's Exhibit No. 4) In that regard, there was no evidence presented that Dr. King complied with the requirements of the Order by

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[2] At the April hearing and until August 5, 2009, Wendell Robinson and Leonard Long were counsel of record. The Court granted their Motion to Withdraw on August 5, 2009, and Mr. Roy Morris became counsel of record on that date. At the August 5th hearing Mr. Morris also sought the admission of Ms. Burns to serve as counsel; however, at the time of the request there was no such application pending, and counsel had failed to submit her request to the Court of Appeals Committee on Unauthorized Practice. The Court, therefore, denied the application.

submitting to that Court for purposes of a Psychological Evaluation.[3] Since that Order Dr. King has been zealous in her efforts to secure custody of the subject minor child, and to vindicate her allegations and perceptions of medical neglect/maltreatment of the subject minor child by Dr. Pfeiffer.

Subsequently, Dr. King filed a Petition for Custody in the Circuit Court for Montgomery County, and a hearing was scheduled before the Honorable Thomas L. Craven. In that Petition Dr. King raised allegations of abuse and medical neglect of the subject minor child by Dr. Pfeiffer. Her Petition was dismissed on June 5, 2008. (Defendant's Exhibit No. 3)[4] By Order entered on the docket on August 18, 2008, by the Honorable Jerry Byrd of the District of Columbia Superior Court, the Plaintiff's Petition for Writs Ne Exeat or in the Alternative for Injunctive Relief was Denied. Concurrent with the subject Writ, the Plaintiff filed a Complaint for Custody, which she later voluntarily dismissed. (Defendant's Exhibit No.

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[3] Dr. King testified that she had three (3) psychological evaluations; however, she did not present evidence that the evaluations were submitted and accepted by the Domestic Relations Court of Arlington, Virginia.

[4] In this exhibit, which consists of a transcript from the subject hearing, social workers from the Child Protection Unit in Montgomery County and the Advocacy Center testified about Dr. King's allegations, her "bizarre" and "disturbing" behavior, and their concern for the safety of the subject minor child occasioned by her behavior. (See, Defendant's Exhibit No. 3 at Pages 10-15)

8) Then in October 2008, the Plaintiff filed in this Court an Emergency Motion for Custody, which was denied by Judge Fern Flanagan Saddler by Order entered on the docket on October 10, 2008. (Defendant's Exhibit No. 7) On or about June 3, 2008, Dr. King, without authorization, removed the subject minor child from the German School and took her to Brooklyn, New York to the Montefiore Medical Center. As a result of that conduct, Dr. King was convicted of child abduction on April 6, 2009, in the Montgomery County Circuit Court. The Plaintiff has also initiated three (3) investigations via the District of Columbia Child Protective Services in October and August 2008, and April 22, 2009. In each instance Dr. King has raised the issue of medical neglect, and in each instance the investigations have been closed as unfounded.[5] On April 21, 2009, the Plaintiff filed the subject Complaint for Negligent Treatment and Injunctive Relief on the grounds of Medical Neglect.

FACTS PERTINENT TO THE SUBJECT COMPLAINT AND DECISION

The question presented is whether the Plaintiff has demonstrated by a preponderance of the evidence medical neglect by Dr. Pfeiffer. In that regard, the Court considered whether there was any evidence that demonstrated that Dr. Pfeiffer had ignored or

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[5] Dr. King also raised the issue of sexual abuse/assault, which like her contentions of medical neglect was unfounded.

otherwise failed to exercise due attention and regard for symptoms of Neutropenia and/or attendant illnesses thereto to the detriment of the subject minor child; whether he had failed to exercise due diligence in the selection of medical professionals in the treatment of Neutropenia to the detriment of the subject minor child; whether Dr. Pfeiffer had failed to seek appropriate medical treatment of Neutropenia or otherwise ignored appropriate or necessary treatment(s) to the detriment of the subject minor child; and whether Dr. Pfeiffer had failed to implement treatment/protocols that were provided to him by medical professionals to insure the subject minor child's medical well-being, to the detriment of the subject minor child? See generally, *In re M.D.*, 758 A.2d 27, 28-39 (D.C. 2000) This Court has reviewed the evidence and the exhibits that were submitted in this case, and can discern no evidence of medical neglect by Dr. Pfeiffer in any of the particulars referenced.

[Name Of Minor Child Omitted] is a six (6) year old little girl, who lives with her father in the District of Columbia, and who attends the German School, where she is in the first grade. [Name Of Minor Child Omitted] engages in age appropriate activity, she gains weight appropriately, eats well, is not sick or sickly, has not missed school, except for medical appointments, and other matters attendant to her mother's perceptions. Dr. Pfeiffer is employed as a physician at Georgetown University Hospital, and is

the subject minor child's sole legal and physical custodian.

Since 2008, the subject minor child has been monitored for **Benign Neutropenia**. Neutropenia is defined as abnormally low levels of neutrophils in the blood. Neutrophils are white blood cells produced in the bone marrow that ingest bacteria. Neutropenia can be a serious disorder, because it makes the body vulnerable to bacterial and fungal infections. The aggregate of the evidence demonstrates that [Name Of Minor Child Omitted] Neutropenia is benign and asymptomatic. Her neutrophil counts have, however, fluctuated over the pertinent period from May 2008 through the date of the last medical report submitted into evidence in this case, which has necessitated regular monitoring and the exercise of precautions. The evidence presented does not provide a specific underlying cause of this illness, except for the opinion of Dr. Rubio, consultant and infectious disease specialist, that the condition was likely secondary to a viral myelopsupression, and the opinion of Dr. Rudolph of Idiopathic Neutropenia, that the condition was likely post viral. (Plaintiffs Exhibit No. 4) There was no evidence presented that [Name Of Minor Child Omitted] **had or has any relevant symptoms that were ignored or unresponded to by Dr. Pfeiffer, such as recurrent fevers, shortness of breath, bacterial infections, periodontal disease or dental problems, visual difficulties or blurred vision, headaches, suffered traumas, chest pain, joint pain, abdominal pain,**

ear pain, bleeding, bruising, GI symptoms, enlarged nodes, loss of appetite, weight changes, or fatigue, diarrhea, constipation, urinary problems, allergies, sinus problems, chills, sweats, rashes, lesions, sensory problems, gait problems or other symptoms of possible infection or acute/active Neutropenia.[6] There is no evidence that the subject minor child has any form of cancer, specifically leukemia, which can be an underlying cause for this condition. (Plaintiff s Exhibit Nos. 4-7; Defendant's Exhibits 11-4)

[Name Of Minor Child Omitted] has a Pediatrician, a Hematologist, and a Pediatric Hematology Oncologist, and she has been consistently examined and evaluated by reputable and capable doctors, each of whom have found the subject minor child to have Chronic Benign Neutropenia, to be asymptomatic, to be stable and to be functioning appropriately. As stated, there has been fluctuation in her absolute neutrophil count ("ANC"), and this fluctuation serves as the attendant basis for the diagnosis of Chronic Benign Neutropenia; a diagnosis that appears from the evidence to be the consensus diagnosis of the medical professionals that have seen her. Neutropenia is and can be a very serious illness, which this Court does not minimize. However, the subject minor child is being seen by doctors, who are

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[6] [Name of Minor Child Omitted] did have a mouth ulcer in October 2008. She was treated by Dr. Abu-Ghosh, and the issue was promptly resolved.

aware of her condition, are trained and employed in the relevant field (pediatric hematology and oncology), and are medically servicing her in a manner which, absent any evidence to the contrary, is consistent with the applicable standard of care. There is no evidence of record that any of the subject minor child's treating and consulting physicians are not qualified in their respective fields, or in some way, in either their consultations, examinations and/or evaluations have deviated from the applicable standard of care. The evidence presented supports their conclusion that the subject minor child's Neutropenia is chronic, benign and asymptomatic. [Name Of Minor Child Omitted] can breathe, hear, speak, talk, walk and learn without pain, without discomfort and without inhibition. She eats well, she has not lost her appetite, she is not losing weight, she is eliminating appropriately, there being no evidence of diarrhea or constipation, and she does not miss school. She is not bleeding, has no GI problems, bruising or enlarged nodes, and her ability to act and to perform like a six (6) year old little girl has not been inhibited. Dr. Pfeiffer has insured that the subject minor child has medical insurance, and is medically evaluated, examined and monitored within the time frames and frequency that the medical professionals have required. Dr. Pfeiffer has been advised of the symptoms to watch out for and the steps to take if such symptoms exist. He has been given basic precautions to assist the subject minor child in avoiding infections and other contagions, such as good oral hygiene, hand washing and

avoidance of large crowds. [Name Of Minor Child Omitted] teachers have been told as much. There is no evidence that Dr. Pfieffer has not followed this medical advice. On the contrary, the evidence demonstrates that Dr. Pfeiffer has sought medical guidance from relevant professionals, that everything that he has been told to do medically has been done, and that he has otherwise acted, throughout the relevant time periods presented to this Court, as a father who is aware of his daughter's medical status, and who has and is prepared to take the steps necessary to insure her medical well-being.

The basis for the Plaintiff's perceptions and contentions of medical neglect are not supported by the evidence presented. Although the basis is not wholly clear, the Plaintiff believes that there are some undisclosed procedures and tests which should be performed. She believes that the subject minor child should be hospitalized and should be receiving alternate, although undisclosed, treatments. Plaintiff's unsuccessful attempt to qualify Dr. Sklaroff as an expert witness in that regard is unavailing. Although Dr. Sklaroff is qualified in the field of hematology and oncology, his work has been primarily with adults. Dr. Sklaroff was offered as an expert in Pediatric Hematology and Oncology. Dr. Sklaroff testified that there was no diagnostic difference between an adult and a child with regard to the onset and treatment of Neutropenia. Yet, he could not provide the Court with any experience, training or other relevant basis to demonstrate the requisite knowledge base and

expertise to support his opinion that there was no difference. Dr. Sklaroff provided no basis from which this Court could conclude that he had any expertise in Pediatric Hematology/Oncology based on either experience or training. Certainly, his testimony that he worked with children as a doctor at a camp would not qualify him to render an opinion regarding the diagnosis and treatment of Pediatric Neutropenia. The testimony from Dr. Scott Myer, the subject minor child's treating physician from the Pediatric Hematology/Oncology Department of the Lombardi Comprehensive Cancer Center, did not advance Dr. Sklaroff's position or standing in that regard. See, *In re Melton,* 597 A.2d 892, 901 (D.C. 1991). See also, *Coulter* v. *Gerald Family Care, P.C.,* 964 A.2d 170, 189-190 (D.C. 2009) (holding that the trial judge has "wide latitude" in the admission or exclusion of expert testimony and this decision should be sustained unless it is manifestly erroneous.) In perhaps, further support of the Plaintiff's assertions, as inferred from Plaintiff's Exhibit No. 3, Dr. Louis Cooper wrote after a June 3rd evaluation of the subject minor child:

> "I may consider doing a bone marrow on this child, or have it done in a tertiary center. I am going to revisit with the child in three days. She looks clinically well. I asked that she stay away from school and stay away from anyone ill".

The Plaintiff removed the subject minor child from the German School, without the authorization or knowledge of Dr. Pfeiffer, to see Dr. Cooper. The

Plaintiff did not return the minor child for a follow-up, as apparently Dr. Cooper expected, but instead removed the subject minor child from the jurisdiction, without authorization, by taking her to New York, where the subject minor child was admitted on June 11, 2008, to the Montefiore Medical Center. The Discharge Summary, Plaintiffs Exhibit No. 4, provides that the subject minor child was admitted not because of illness, although her Neutropenia was acknowledged, but for social reasons attributable to the Plaintiff's erratic behavior. The diagnosis provided in the Discharge Summary is Idiopathic[7] Neutropenia, post viral, a diagnosis that is not dissimilar to the one provided by her treatment team, as authorized by Dr. Pfeiffer.[8] The fact that the underlying cause of the subject minor child's Neutropenia is not definitively known cannot be viewed to support the Plaintiff's contention of medical neglect, since the evidence demonstrates that the Neutropenia is benign and asymptomatic, and there is no evidentiary basis from which this Court can conclude that if the etiology were known, that the subject minor child's medical regimen would be any different from that being provided at this time.

Moreover, there is no indication from the available medical reports that the subject minor child

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[7] Idiopathic: A disease of no known origin. See, Webster's New World Dictionary.

[8] On June 16, Dr. King was arrested and the subject minor child was returned to her father's care and custody.

has cancer, or specifically has leukemia. Her treating physicians have concluded that she does not, and there is no evidence that this conclusion is unsupported or that in reaching this conclusion that the subject minor child's treatment team has deviated from an applicable standard of care. (Defendant's Exhibit No. 12) Similarly, there is no evidence presented that a bone marrow evaluation, during the pertinent time frame as presented to this Court, is/was medically necessary. Nor is there any evidence before the Court that if such a procedure becomes medically necessary that her current medical team, that consists of a pediatrician, hematologist and a pediatric hematologist/oncologist, would not recognize the need for the same, recommend that it be done, and that Dr. Pfeiffer would not authorize a medically necessary procedure. There is simply no evidence from which this Court could reasonably conclude that [Name Of Minor Child Omitted] should have other doctors, should be needlessly tested and prodded, or should have had a bone marrow test, or have had any other medical service or diagnostic that she has not or is not currently receiving.[9]

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[9] Despite, the Defendant's protestations, this Court tried to give the Plaintiff every opportunity to make her case, even allowing a subsequent date for a further hearing to give her an opportunity to present further evidence and an expert witness, Dr. Sklaroff, even though after the April hearing this Court stated to the Plaintiff that she had, at that time, failed to present any evidence of medical neglect.

CONCLUSION

In conclusion, the Plaintiff has failed to prove medical neglect by Dr. Pfeiffer, or any basis for injunctive relief.[10] Dr. Pfeiffer has not denied the subject minor child required medical treatment; he has not relied on charlatans in that regard, but reputable medical professionals who have specialties in fields relevant to the subject minor child's medical needs and well-being. Dr. Pfeiffer has not ignored medical treatment recommendations, but has complied with every evaluation and examination that has been required. He has implemented the precautions that have been recommended by medical professionals. The subject minor child has not been harmed by Dr. Pfeiffer's actions, is asymptomatic, and has not, within the relevant time frame, experienced any of the symptoms described in the medical reports that would indicate more active rather than benign Neutropenia. How many diagnostics or medical services are required to effectuate a cure, medical well-being or quality of life? Should this diagnostic or some other be performed or should this treatment or some other treatment be provided? Who should provide such services? When, and under what circumstances should a particular medical service be provided, and at what costs to the patient relative to

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[10] With regard to the request for injunctive relief, the record is devoid of any evidence of likelihood of success on the merits, of irreparable injury, or that the public interest would be served by the granting of injunctive relief.

some appreciable outcome? These are topical questions about which medical professionals, the insurance industry, interest groups, and the citizens of this country have varying opinions that are now being expressed as we, as a nation, debate health care reform. In this case, however, the evidence does not pose these questions, but demonstrates that within the relevant time frame that the subject minor child has been provided with the medical personnel and with the medical services that she requires, and that the quality of her life has not been adversely impacted by the decisions made by Dr. Pfeiffer, in that regard. The evidence does not support a finding of medical neglect.[11]

ORDER

Accordingly, for the foregoing reasons, it is this 2nd day of December 2009:

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[11] There are some exhibits that the Plaintiff submitted to the Clerk's Office on August 11, after the hearing on August 4, which are not part of the evidentiary record, and which were not considered by this Court since they were not received as evidence during the subject evidentiary hearings. Indeed, the Court Record is filled with attachments and exhibits, that were submitted by the Plaintiff that have not been considered by this court, since they are not part of the evidentiary record as produced and received by the Court during the evidentiary hearings in April and August 2009.

ORDERED, that the Plaintiff's Complaint for Negligent Treatment and for Injunctive Relief, be and hereby are **DENIED**.

SO ORDERED.

/s/ Zinora M. Mitchell-Rankin
Zinora M. Mitchell-Rankin
Associate Judge

(Signed in Chambers)

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Va. Sup. Ct. R. 5A:3 (2009)

Rule 5A:3. Extension of Time.

(a) The times prescribed for filing the notice of appeal (Rules 5A:6 and 5A:11), a petition for appeal (Rule 5A:12), and a petition for rehearing (Rule 5A:33) and a request for rehearing en banc (Rule 5A:34) are mandatory. Except for the petition for appeal which is addressed in Rule 5A:12(a) and Virginia Code § 17.1-408, a single extension not to exceed thirty days may be granted if at least three judges of the Court of Appeals concur in a finding that an extension for papers to be filed is warranted by the intervention of some extraordinary occurrence or catastrophic circumstance which was unpredictable and unavoidable, The time period for filing the notice of appeal is not extended by the filing of a motion for a new trial, a petition for rehearing, or a like pleading unless the final judgment is modified, vacated, or suspended by the trial court pursuant to Rule 1:1, in which case the time for filing shall be computed from the date of the final judgment entered following such modification, vacation, or suspension.

(b) Except as provided in subsection (a) of this Rule, the times prescribed in these Rules for filing papers, except transcripts (Rule 5A:8(a)), may be extended by a judge of the court in which the papers are to be filed on motion for good cause shown and to attain the ends of justice.

(c) Any document required to be filed with the clerk of the Court of Appeals, or filed in the office of

the clerk of the Court of Appeals, shall be deemed to be timely filed if it is mailed postage prepaid to the clerk of the Court of Appeals by registered or certified mail and if the official receipt therefor be exhibited upon demand of the clerk or any party and it shows mailing within the prescribed time limits. This Rule does not apply to documents to be filed in the office of the clerk of the trial court or clerk of the Virginia Workers' Compensation Commission.

(d) Inmate Filing. A paper filed by an inmate confined in an institution is timely filed if deposited in the institution's internal mail system with first-class postage prepaid on or before the last day for filing. Timely filing of a paper by an inmate confined in an institution may be established by (1) an official stamp of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing, (2) an official postmark dated on or before the last day for filing, or (3) a notarized statement signed by an official of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing.

No: 09-612

In the Supreme Court of the United States

Ariel King,

Petitioner

v.

Michael Pfeiffer,

Respondent

On Petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Virginia

REPLY BRIEF FOR WRIT OF CERTIORARI

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December 30, 2009

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REPLY TO RESPONDENT'S BRIEF

Respondents Brief is misguided in that it fails to address the core issue presented by the *Dr. King* before the Court. The core issue is whether the same due process and equal protection rights afforded in a "parental termination proceeding" should be the same as those afforded in a "custody" proceeding where parental rights are effectively terminated by the actions of the state through its court. The core issues include the human rights of a dual citizen, including her internationally mandated rights .

Besides missing the key point of the *Petition*, a careful reading of the *Respondent's Brief* reveals numerous assertions that are contradicted by, or not supported by its own attachments. This *Reply* will not waste the Court's time with the extensive list of all of those misstatements and misinformation, but will focus on only some new key points raised in that Respondents Brief.

This Is A Matter Of First Impression For The Court And The Issues Are Of Wide Spread Importance

The widespread nature of the epidemic problem in family courts, and its relation to domestic violence and child abuse is well documented by the extensive facts and figures presented in the *Amici Brief* filed by *Stop Family Violence, et. al..*, Case No. 09-612 (December 16, 2009) There is a gorilla war going on in the family courts, where those courts have become the weapon of choice for abusers to promote their abuse through scorched

earth litigation to achieve what the psychological community calls "domestic violence by proxy."[1] This is made possible because procedural safeguards are either scarce, non-existent, or completely ignored by many of these courts. The vicious and factually flawed attacks in Respondents Brief should give the Court the sense of the uncivilized, anarchy and viciousness of these "family court" proceedings, and the destruction they cause on a child's relationship with their parent(s).

Respondent's Brief Manipulates the Facts to Make This Court Believe that Dr. King's Concern and Love for Her Daughter Makes Her Crazy and a Threat to Her Child, When, Reports of Court Officers Show Otherwise.

In fact, no court has made a finding based on an evidentiary hearing that Dr. King is an unfit parent, *and*, the only child custody study done by any court recommended that Dr. King have full physical custody of the child, with shared legal custody in spite of the financial void that Dr. Pfeiffer left them in. ***See, Recommendation And Summary Portions Of Evaluation, 10/24/2007, attached hereto at Reply App. 1***

A GAL in Georgia authored a similarly favor-

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[1] Professor Joan S. Meier, Esq. , George Washington University Law School *Research Indicating That The Majority Of Cases That Go To Court As "High Conflict" Contested Custody Cases Have A History Of Domestic Violence*, September 16, 2009 (www.leadershipcouncil.org/1/pas/Meier.html); also, *Domestic Violence (DV) by Proxy: Why Terrorist Tactics Employed by Batterers Are Not "PAS,"* September 16, 2009 www.leadershipcouncil.org/1/pas/DVP.html

able report praising Dr. King's care of the child in February 2008 when Dr. King, an only child, dutifully went to Georgia to tend to her stroke-stricken ill Mother who was in the Hospital ICU. *GA GAL Report,* attached hereto *Reply App. 8.*

These evidence-based Court recommendations regarding Dr. King's superior parenting contradict the distorted claims of *Respondent's Brief.* Contrary to *Respondent's Brief, there are* no *court* findings (including any by the JDR court and the Montgomery County child protective services (which is not a court)) that "determined that the mother was not acting in the best interest of the child." *See, Resp. Brief at 23-24.* In fact, no such findings exist in either jurisdiction. Instead the JDR Court's evaluator found the mother to be committed, creative, fit and best to care for their daughter. *See. Reply App. 1*

Contrary to Respondent's Brief at 24, Dr. King Completed and Noticed a Full Psychogical Exam that Concluded that Dr. King Is Fit for Parenting

A praecipe was submitted to that effect to the Virginia JDR court on August 21, 2008. *See, Reply App. 19.* Despite that submission, the JDR court took no action to allow contact for the child with her mother. Since then, Dr. King has presented two other psychological exams to various courts in the US that have also been ignored. In Germany, Dr. King fulfilled the required psychological exam for the fourth time in less than 2 years.[2] Thus, Respondent's claim that Dr. King

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[2] After November 20, 2009 hearing, the German Family Court concluded that Dr. King had once again met the VA

"always carried the keys to resolve this matter in her own pocket" has no basis in fact.

Dr. King Sought Dismissal for Lack of Subject Matter Jurisdiction, Not Custody.

Contrary to *Respondent's Brief at 5-6* -- and plainly explained in report to the JDR Court on 10/24/2007 -- it was Dr. Pfeiffer who sought sole legal and physical custody from the beginning, not Dr. King. *See, Recommendation And Summary of Evaluation, 10/24/2007, attached hereto at Reply App. 1.* Meanwhile, Respondent concedes, Dr. King sought dismissal for lack of subject matter jurisdiction. *See, Resp. Brief at 7.*

Dr. King Clearly Represented Herself *Pro Se* Well Before the June 6, 2008 Hearing Date

Respondents Brief falsely claims that Dr. King was not representing herself *pro se* at the time of the June 6, 2008 hearing and subsequent periods. *See, e.g., Respondents Brief at 17.* In fact, as displayed on the Arlington Circuit Court website, as early as April 25, 2008 Dr. King filed a Petition for Writ of Mandamus *pro se* (Arlington Circuit Court Case No. CL08000524-00) (*Resp. App. 18*), when she had no financial choice but to represent herself in Virginia. *See, Reply App. 1.* Even the attachments at *Resp. App. at 22-26* clearly state that the filing was made by Dr. King *pro se.* The last lawyer to represent Dr. King in Arlington Virginia filed his withdrawal for lack of payment

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Court conditions, yet contact had not been reestablished between this German-American child and her mother because of Dr. Pfeiffers opposition. *Order of Family Court, Bayreuth Germany*, Case No. 003-F-354/09 (12/18/2009).

on or about April 24, 2008. *See, Reply App 16.* Thus, as pointed out by the *Amici Brief at 31*, with the combination of threats of imprisonment without due process and representing herself *pro se*, "the court made it impossible for King to access any post-deprivation remedy by issuing an arrest warrant for her so that if she appeared to defend her rights you would be arrested."

Dr. King's Appeal to the Circuit Court for Lack of Subject Matter Jurisdiction Was Timely, Its Notice Fully Processed As Such

Respondent was incorrect that the time to appeal the June 6, 2008 Order was by June 16, 2008. *See, Respondents Brief at 22.* No Virginia court found this to be the case. Although labeled "final," the June 6, 2008 Order could not be considered a *final order* under Virginia law because it failed to "dispose[] of the whole subject, give[] all the relief contemplated, provide[] with reasonable completeness for giving effect to the sentence, and leaves nothing to be done in the cause save to superintend ministerial the execution of the order." *Daniels v. Truck & Equipment Corp.*, 205 Va. 579, 585, 139 S.E.2d 31, 35 (1964). (citations omitted)

The June 6, 2008 JDR Order by its own words called for subsequent proceedings to resolve further custody matters. There remained outstanding matters in pending motions that had not been ruled on. This is clearly illustrated by the subsequent *ex parte* hearing and subsequent orders on September 16, 2008, which Respondent's brief notably omits to mention. A timely appeal to the Circuit Court was noticed and filed for those September 16, 2008 Orders with the JDR Court. In fact, had it not been timely, the JDR court

would not have forwarded the Notice to the Circuit Court and served it on the parties. There is nothing in the Circuit Court dismissal order that states that the appeal of the entire proceeding is untimely. As set forth in the Circuit Court's own notice, the earliest date set for a hearing in that appeal was to be October 20, 2009 (*See, Circuit Court Docketing Notice, Reply App. 20*), ten days *after* the *ex parte* hearing in which Dr. Pfeiffer went to court without clearing the date with Dr. King, and held a private hearing with the Circuit Judge. who then dismissed *ex parte* Dr. King's timely filed appeal.

No Case Law Supports Respondent's Claim that the Mere Presence of a GAL Necessarily Protects a Child's Rights.

No evidence is presented by *Respondent's Brief* that the JDR Court GAL had argued to the Court that it should not infringe the child's basic human rights to have contact with her mother, nor did that GAL present any sworn testimony, cross examine any witnesses, or submit any evidence during the entire proceedings below. *Respondent's Brief at 23-24.* In fact, exactly the opposite was true, which caused Dr. King to file a *Motion for Sanctions* against the GAL in the JDR Court. That motion was filed by mail June 5, 2008 and docketed June 9, 2008 and based on discovery withheld for weeks by Dr. Pfeiffer until June 2, 2008 (just four days before the June 6, 2008 hearing). That discovery revealed that the GAL violated the rules of the court and her duty to the child. The JDR Court has not held a hearing nor has it ruled on that *Motion for Sanctions* against the GAL.

A Novel Version of the June 6, 2008 Order Attached to the Respondent's Brief Is Of Questionable Authenticity and Not the Same as the Version Served and Certified by the JDR Court to the Parties on June 6, 2008

Respondent's Brief makes an issue of a new additional version of the June 6, 2008 Order found at *Resp. App. 31.* That version has never been previously seen by Dr. King, never been produced previously by the Dr. Pfeiffer in the many court proceedings since June 6, 2008, nor was it served by the Court on Dr. King. The version in *Respondent's Brief* was not the version identified as in the file when inquiry was made to the JDR Court clerk as of Sept. 24, 2008 (re: date of appeal notice filing). The only known true version, that was certified and served on June 6, 2008, is found in the *Petition.*

Regardless of whether one considers the additional version, *it changes none of the arguments merits in the Petition* because the "new" version attached to the *Respondent's Brief* does not change the facts relevant to the issues presented.

The September 5, 2007 Order Was Not An "Agreed Order" As Claimed by Respondent

There is nothing in the September 5, 2007 Order that indicates it was agreed to. *Resp. Brief* at 5. No oral or written agreement regarding the order was noted. To the contrary, Dr. King was justifiably stunned that an order was entered at a hearing that was *not* noticed as a hearing on custody, nor was any evidence or sworn testimony taken. The hearing was only for rescheduling to allow time to respond to the petition. Instead the

"rescheduling hearing" was turned into a "custody hearing", one day earlier than scheduled --- with no opportunity to respond to the custody petition.

Finally, even if there were agreement on jurisdiction, it would not be determinative because subject matter jurisdiction cannot be consented to, waived or agreed to. *See Petition at note 1.*

There Was No Notice Indicating that the June 6, 2008 Hearing Was for Final Legal and Physical Custody.

Even Respondent effectively concedes that the June 6, 2008 was only noticed as a hearing having to do with "rules to show cause" carried over from the February 8, 2008 hearing. *Resp. Brief at 9.* Respondent's Brief also effectively concedes that Dr. King, filing *pro se*, asked for a rescheduling of that hearing. *See, Resp. App. 22.* No action was ever taken by the JDR Court on that Motion. Proper notice includes advising as to the intended purpose of the hearing. Thus, there was inadequate notice, and thus lack of due process.

Neither Dr. King Nor the GAL Asked for Transfer of Jurisdiction to Georgia

The Georgia Guardian ad litem (GAL) identified at *Respondent's Brief at 7* visited the child and gave a highly favorable independent report about the grandmothers home, child care and state of the child while, Dr. King, an only child, was in GA temporarily to make medical decisions for her elderly stroke-stricken mother in the hospital ICU. *See, GAL Report, attached hereto Reply App. 8* Neither Dr. King nor any of her representatives have ever suggested or asked that jurisdiction be moved to Georgia. Respondent misrepre-

sents the Georgia GAL having asked for such a transfer. She said nothing of the kind. *See, GAL Report, attached hereto at Reply App. at 8*

The June 5, 2008 Maryland Order Relied on By Respondent As Quashing the June 2, 2008 Protective Order Is On Appeal

Respondent fails to point out that the Maryland Temporary Protection (TPO) for both Dr. King and their child (for "abuse of a child (both physical and sexual)") was prematurely quashed in a unilaterally called hearing by the Respondent's counsel, again four days before the scheduled hearing of June 9, 2009. The June 5, 2008 Order referred to at *Resp. Brief at 9 - 11* is on appeal. *King v Pfeiffer, Appeal from the Circuit Court for Montgomery Count, (Case No. 70620FL), No. 1007, Sept Term 2009, Maryland Court of Special Appeals* (Briefed Dec. 7, 2009). Transcripts of the hearing on June 2, 2008 show no false statements or omissions. The Judge who granted the TPO is the only judge who has interviewed and observed the mother and child.

The DC Superior Court Order Cited by Respondent's Brief Is On Expedited Appeal

Respondent relies upon the DC Family Court Order that dismissed a medical neglect complaint against the Respondent. *Resp. Brief at 24, and Resp. App. 50-51.* Respondent failed to note that the Superior Court did not allow Dr. King any discovery and refused to allow any of her experts to testify, nor considered any of her exhibits. An expedited appeal of the case is now pending (*King v. Pfeifer, Case* 09 DRB 1167, *DC Sup. Crt (December 2, 2009), Appeal Pending*)).

Respondent's Brief at 22 Inaccurately Implies that Dr. King Used "first class mail" to Serve Her brief to the Court of Appeals.

As documented in the *Petition*, priority mail with signature confirmation was used, and an initial attempt at delivery was made by USPS the next day after mailing -- no later than it would have arrived with the fastest delivery offered by the USPS, Express Mail. *Petition at 11.* Interestingly, the US Supreme Court accepts only two methods of file-by-mail service as acceptable: Express Mail and *Priority Mail. Sup Crt Rules 29(a)(2) Respondent's Brief* cites no law excluding priority mail as compliant with Virginia mailing rules.

Respondent's Brief's Claim that Parental Rights Were Not Effectively Terminated by the June 6, 2008 Order Rings Hollow

Respondent claims that the June 6, 2008 Order "clearly established a regime by which Dr. King could regain *some* access to her child..." *Resp. Brief at 19.* However, Respondent's Brief notably appears unable to tell the court what "some access" is. In custody nomenclature, visitation is a form of physical custody, which Respondent claims was granted to Dr. Pfeiffer with "finality."

Respectfully submitted,

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APPENDIX

Recommendation And Summary Portions Of JDR Court Ordered Evaluation

CUSTODY INVESTIGATION
ARLINGTON JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT
ARLINGTON, VIRGINIA

NAME: [Name of Child]
D.O.B.: 5/7/03 (4 YEARS OLD)
RACE/SEX: AFRICAN/AMERICAN
GERMAN FEMALE

MOTHER: DR. ARIEL ROSITA KING

FATHER: DR. MICHAEL HERBERT PFEIFFER
.....

SUMMARY AND EVALUATION:

This court was brought to the Court's attention as a result of Dr. Michael Pfeiffer filing a petition requesting sole custody of his daughter, [Childs Name Omitted].

[Childs Name Omitted] is a remarkable four year old with an outgoing and friendly personality. Since being assigned to this case, this counselor has had the opportunity to have several visits with [Childs Name Omitted] and her parents and was able to gain insight into this family's current situation. Throughout the investigation this family has been cooperative in allowing this counselor to visit in their respective homes and provide this counselor with the necessary infor-

mation in order to complete this investigation. Through this counselor's interactions and observations of the child and each parent, it is apparent to this writer that [Childs Name Omitted] has a strong attachment with her mother in which her mother's presence provides her with a sense of security and comfort. It is of this writer's opinion that Dr. King has been the primary caregiver of [Childs Name Omitted]. Since the time of her birth, [Childs Name Omitted] has been in the care of her mother and has virtually spent every night by her mother's side. This is evident through the many photos and videos documenting [Childs Name Omitted]'s extensive travels throughout the world with her mother. While Dr. Pfeiffer claims that he was the primary caregiver of his daughter, it does not seem realistic when he reported working 80 hours per week in order to complete his residencies. It does seem plausible that Dr. King placed her career on hold in order to support her husband's aspirations to complete his residency for neurology in the United States. While Dr. King is a citizen in the United States the majority of her life and career has been spent outside of the United States as her degrees and studies are in International Health and Policy. Both parents are in agreement that the couple's original plan was to come to the United States in order for Dr. Pfeiffer to complete his studies. At some point in time, Dr. Pfeiffer changed his mind and relayed his desire to stay in the United States in order to advance his studies. It is appears that Dr. Pfeiffer was misleading, whether intentionally or not, about his reluctance to have a private practice of his own. Instead, his reluctance was relayed to the family just days prior to the family's reloca-

tion to Florida. This could not have come at a more inopportune time in which the family was being evicted from their current home leaving them without stable housing in the meantime. The family appears to have devoted the last few years supporting Dr. Pfeiffer's medical studies. That eventually led to his signing of a contract in April of 2005, agreeing to have his own private practice in Englewood, Florida. As a result, the family invested a lot of time in order to do things like finding and purchasing a home in Florida. In addition, Dr. King had the understanding that she would be handling the administrative duties that goes along with running a private practice. Dr. King expressed excitement about her husband's achievement in obtaining his own private practice and also expressed her relief that the family would finally have a sense of financial stability after years of financial struggles in order to support her husband's career.

Despite the differing stories regarding the circumstances leading to the separation of Dr. King and Dr. Pfeiffer it does appear that Dr. King was left without adequate financial means and bared the brunt of the responsibility in caring for their daughter. It appears that she tried to maintain as much stability as possible so that [Childs Name Omitted] would not be so emotionally affected by her parents' separation and living situation. While Dr. Pfeiffer has expressed his concern about his daughter's well-being, he has not exactly provided the necessary financial support to ensure his daughter's well-being. While this counselor was unable to confirm Dr. Pfeiffer's compliance with his child support obligation of $500 per month there is a discrepancy in the amount that

Dr. Pfeiffer has paid thus far. Dr. Pfeiffer is adamant that he has paid $500 each month. Dr. King reported that she has only received one payment in the amount of $500. This is concerning because Dr. King need consistent support in order to maintain her housing. While this counselor cannot accurately determine whether Dr. Pfeiffer had knowledge of his wife and child's whereabouts, Dr. King did provide written documentation in the form of emails she sent and responses received from Dr. Pfeiffer dating from June 25, 2007. In these emails, Dr. King relayed to her husband her desire for him to have contact and maintain a relationship that would promote the health and welfare of their daughter. Dr. King has consistently expressed her desire for Dr. Pfeiffer's continued contact and involvement in their daughter's life. This feeling appears mutual in that Dr. Pfeiffer also agrees that [Childs Name Omitted] needs to have continued parental involvement from both parents throughout their daughter's life.

While Dr. Pfeiffer is asking for full custody of his daughter, there does not appear to be concrete plans in place for her if he obtains full custody. When Dr. Pfeiffer was questioned about what he would do with his daughter on a daily basis while he is working, he simply stated that she could go to the YMCA all day or one of the local schools. Since the primary goal of each parent is to maintain as much stability as possible for their daughter, it does not seem appropriate to remove her from her present environment where she is very happy and comfortable with all of her classes and activities each day. Although Dr. Pfeiffer's home is in close proximity to Dr. King's home, this counselor is leery about Dr. Pfeiffer's

ability to maintain his daughter's schedule considering his current work schedule. It seems more appropriate for [Childs Name Omitted] to continue with her current status instead of forcing her to adapt to a new environment.

This counselor would like to comment on the concerns Dr. King has reported to this counselor regarding [Childs Name Omitted]'s overnight visitations with her father. Dr. King has reported to this counselor the behavioral problems [Childs Name Omitted] has been experiencing since the overnight visitations were started. Dr. King has reported that her daughter has been displaying behaviors such as throwing temper tantrums, scratching and biting herself and having accidents surrounding the times prior to and after overnight visitations with her father.

These behaviors are evidently recent behaviors that have never occurred in the past. This counselor is aware of Dr. King's attempt to relay her concerns to her husband and asking for some type of alternative visitations until [Childs Name Omitted] becomes more comfortable with her parents' new living arrangements. It appears that Dr. Pfeiffer is unwilling to temporarily suspend his overnight visitation which is clearly understandable since he wants to spend time with his daughter. Whether this is right or wrong this counselor can only report that there has been a decline in [Childs Name Omitted]'s behavior during the time of this counselor's first and last visitation with [Childs Name Omitted]. It is difficult to determine whether her behavior is a result of the emotional distress she is experiencing regarding her parents' separation; nor does this counselor have the expertise to make any accurate conclusions. Due to

her age, she probably does not have the capacity to fully understand her parents' situation as she has made comments to this counselor that she wants to sleep with both her parents in her home. She is also confused about what is her home. This counselor can only report that [Childs Name Omitted] has made comments to this writer that while she enjoys visits with her father she has stated that she is scared in her father's home and wants to spend the night with her mother. Perhaps [Childs Name Omitted] needs more time to become familiar with her father's home so that she feels more comfortable with overnight visitations with her father. After all, Arian-Leilani has virtually spent every night with her mother throughout her lifetime thus far. This counselor feels it is also important to relay to the Court that she has also made several comments to this counselor that her father comes into her bed a night. In addition, Dr. King has tried to address this issue with her husband requesting that it stop. This counselor cannot confirm whether this is occurring, but if it is, this counselor would hope the Dr. Pfeiffer would stop this behavior and understand that it is not appropriate considering his daughter's age. Lastly, this counselor would like to relay to the court Dr. King's worries that she expressed about her concerns that Dr. Pfeiffer will flee the country with their daughter. This counselor would defer to the court in that this counselor does not know the possible legal actions, if any that are available to ensure the safety of her daughter.

Overall, all is not lost in this case in which this counselor strongly feels that both parents are capable of maintaining a positive relationship in a positive manner for the purposes of their daugh-

ter. It is felt that there will be less conflict between both parents once resolutions have been made in terms of living arrangements, child support, financial responsibilities, etc. It appears that these issues are causing conflict between both parents in which a final resolution needs to be established.

RECOMMENDATION

It is respectfully recommended that the parents, Dr. Ariel King and Dr. Michael Pfeiffer, share joint custody of their daughter, [Childs Name Omitted], with physical custody being given to Dr. Ariel King.

-

/s/
Michele Wood
Probation Counselor
Date: *10/24/2007,*

/s/
Christopher Edmonds
Probation Supervisor
Date: *10/24/2007*

Georgia GAL Report On the Situation Surrounding Dr. King's Efforts to Help Her Ill Mother (2/4/2008).

IN THE JUVENILE AND DOMESTIC
RELATIONS DISTRICT COURT
FOR THE COUNTY OF ARLINGTON
COMMONWEALTH OF VIRGINIA

MICHAEL H. PFEIFFER,
Petitioner
v. CASE NO. J-31848-01
ARIEL R. KING.
Respondent
In re: Ariana Leilani King-Pfeiffer, Minor Child

ANSWER OF GUARDIAN AD LITEM

COMES NOW CAROLYNE RICHARDSON, received a request from Dr. Ariel R. King on January 30, 2008 to serve as Guardian ad Litem for Ariana Leilani King-Pfieffer, a Minor Child and the biological daughter of the Petitioner and Respondent (hereinafter referred to as the "[Childs Name Omitted]"), for the limited purpose of determining the suitability of the temporary living arrangement in Georgia during her mother's illness; and as such Guardian ad Litem, I hereby file my Answer to this request as follows:

BACKGROUND SUMMARY

Dr. Ariel R. King (hereinafter referred to as "Dr. King" or the "Respondent") who is the Respondent and the custodial parent of Ariana Leilani has temporarily removed the Minor Child from her residence in Maryland to Georgia with the knowledge of the Petitioner, Dr. Michael H.

Pfeiffer. Purpose of this emergency relocation allows Dr. King to support and oversee the care and business affairs of her mother (Dr. Margo King) who recently had a stroke on January 20, 2008. Dr King's mother is currently hospitalized in critical condition in the Intensive Care Unit (ICU) at DeKalb Medical Center (DMC) in Decatur, GA. Dr. King is the only child of her mother and is considered the next of kin. Guardian ad Litem (hereinafter referred to as "GAL") had the opportunity to review the Custody Investigation submitted on October 24, 2007 and the Initial Order for Child Custody entered on September 5, 2007. GAL also interviewed the Respondent, [Childs Name Omitted] and Ms. Melina Orfanopoulos who is a bilingual German live-in babysitter hired by Dr. King to provide child care assistance (hereinafter referred to as "Melina").

Dr. King, [Childs Name Omitted] and Melina temporarily reside in the home of Dr. King's mother. This residence is located in an upscale, quiet country club community where there is a lake, golf course, playground and other amenities for the enjoyment of families. GAL believes that this temporary relocation of [Childs Name Omitted] to Georgia for approximately six weeks will serve her best interest and will not interfere with the intent of the Initial Order, 'Which allows the Minor Child to visit this area, based on interviews, interactions, observations and home evaluation. Dr. King has made provision for [Childs Name Omitted] to communicate with her father, Dr. Michael H. Pfeiffer, in frequent telephone conversations. She is more than willing to permit the father of [Childs Name Omitted] to visit in Georgia

PERSONAL INTERVIEWS/ASSESSMENTS
Ariel R King, PhD

Dr. King expressed concerns about following the terms of the initial custody agreement and about wanting to provide the necessary support and assistance to her mother as she recovers from a stroke suffered on January 20, 2008. She is the only child of her mother and her next of kin since her father is deceased.

Dr. King immediately made arrangements to travel to Georgia the next day upon hearing about her mother's emergency hospitalization in the ICU at DeKalb Medical Center with a stroke. Her mother underwent brain surgery to remove a blood clot that triggered her stroke. She is considered medically unstable since she has been transferred from ICU to the floor or step down unit on two occasions. Additionally, she has pronounced neurological and physical limitations that will require intense rehabilitation. Since Dr. King is identified as next of kin and has a general power of attorney to handle all affairs of her mother, Dr. King's presence in Georgia is needed to ensure that her mother receives care and that she is transferred to the appropriate rehabilitation facility.

The mother of Dr. King is also a business owner and practices as a licensed psychologist in DeKalb County. The Respondent is managing the business affairs using her power of attorney to ensure that all clients are being followed in the practice and managing all financial obligations of the practice. She is also handling the mortgage payments and other debts associated with her mother's residence.

While Dr. King is tending to the medical

care and business affairs of her mother, she is also providing care for [Childs Name Omitted]. She recognizes the need for a support system. She hired a German live-in babysitter named, Ms. Melina Orfanopoulos to provide child care assistance on January 23, 2008. This babysitter remains with [Childs Name Omitted] so that Dr. King can visit with her mother at the hospital and spend time at her mother's practice. Dr. King reports that the babysitter spends quality time with Ariana Leilani in learning the German language and in providing child care services and activities. She has brought toys and age-appropriate books in German for her daughter from their residents in Maryland.

[Childs Name Omitted] King-Pfeiffer

[Childs Name Omitted] is a typical, delightful and energetic 4.75 year old. She has a very friendly and outgoing personality. She has age-appropriate developmental characteristics in which she dresses self with minimal supervision, she engages in conversation readily and she enjoys acrobatic activities, such as somersaults, balancing and jumping. She knows her alphabets, counts to twenty and identifies colors. GAL observed [Childs Name Omitted] communicating with her mother and the babysitter in German and responding appropriately to their directions. [Childs Name Omitted] is apparently adjusting to this temporary new environment without problems. She smiles and laughs freely in play activity.

Ms. Melina Orfanopoulos

Ms. Melina Orfanopoulos is a 19 year old German citizen who has entered the United States on a tourist visa. Melina indicated that she

came to Georgia at the request of Dr. King to help with [Childs Name Omitted] on January 23, 2008. She also reported that she provided child care for [Childs Name Omitted] in the past when she served as a babysitter from July to October 2007. She returned to her homeland upon expiration of her visa.

During the day, Melina spends a great deal of time with [Childs Name Omitted] while Dr. King visits with her mother at the hospital and spends a couple of hours at her mother's business. She begins the day at 7:30 in the morning. She fixes breakfast for the family and self. Dr. King awakens [Childs Name Omitted] and prepares the child for the day. [Childs Name Omitted] watches children programs on public television in the morning. Dr. King leaves for the hospital about 10:00 am.

Subsequently, Melina takes [Childs Name Omitted] outside to the playground and then feed the ducks on the nearby lake. In the afternoon, they return home where they eat lunch and where Melina reads books in German to [Childs Name Omitted]. [Childs Name Omitted] will then draw and color objects. She also
reports that friends of Dr. King's family may take her and [Childs Name Omitted] to the mall and a movie. Additionally, she state that Dr. King returns home between her visits with her mother.

After Dr. King makes her final visit to the hospital, she finally returns home to prepare [Childs Name Omitted] for bed at 7:00 p.m. GAL also inquired about [Childs Name Omitted]'s knowledge of the alphabets. spelling of her name and ability to count. Melina indicates that [Childs Name Omitted] knows the alphabets in English

and German. She also reports that she can count to "20" in English and German. [Childs Name Omitted] is learning to spell and write her name.

HOME EVALUATION

The residence of Dr. King's mother is located in an upscale, quiet country club community outside Atlanta in DeKalb County, Georgia. The physical address of this home is located at 627 Masters Drive, Stone Mountain, GA 30087-6028. This residence is quite spacious, which permits Dr. King, [Childs Name Omitted] and Melina separate bedrooms and bathrooms. Property characteristics show that the residence has two stories with three bedroom, three full bathrooms and three half-bathrooms at 3,854 square foot based on the Property Appraisal Report. (See Exhibit One).

This residential community consists of many amenities to include a club house, golf course, playground and lake. As described in the GAL, interview with Melina, Melina takes [Childs Name Omitted] daily to the playground and then to the lake to feed the ducks.

DISCUSSION

After the Guardian ad Litem had carefully investigated the emergency status of this child custody case, she recommends that [Childs Name Omitted] King-Pfeiffer remains with her mother, Dr. Ariel R King, in Georgia for up to six (6) weeks. This action will allow Dr. King who is an only child and who has a general power of attorney sufficient time to ensure that her mother receives the proper care and the appropriate placement in a rehabilitation facility following a stroke, and to identify a management team or a qualified person to provide oversight to her mother's prac-

tice.

Most importantly, [Childs Name Omitted] has adjusted well to this new environment. She is very happy and playful. Her mother is providing structure and some consistency in which she has hired Melina, a bilingual German babysitter, who is familiar with [Childs Name Omitted] and who can help with her proficiency in German. Melina enjoys working and playing with [Childs Name Omitted]. She has patience and a very caring demeanor.

The temporary housing situation is more than adequate for [Childs Name Omitted]. Dr King brought some age-appropriate toys and books for her daughter from Maryland. There is sufficient living space for Dr. King, [Childs Name Omitted] and Melina. Melina takes [Childs Name Omitted] to the playground and the lake to feed the ducks in the neighborhood. [Childs Name Omitted] has ample stimulus in promoting her development.

CONCLUSION

The Guardian ad Litem PRAYS for the following relief:

(a) That the Court would consider the emergency nature of the temporary relocation of [Childs Name Omitted] King-Pfeiffer to Georgia.

(b) That the Court would allow Dr. Ariel R · King to remain in Georgia to handle the medical care and business affairs of her acutely ill mother for at least six weeks.

The Guardian ad Litem further requests that the

Court issue an order authorizing the same.

/s/
Carolyne Richardson
Georgia Bar No. 603813
945 South Hairston Road
Stone Mountain, GA 30088
(404) 501-9115

2/4/2008
Date

Motion For Leave To Withdraw Appearance Of Counsel (filed on or about April 24, 2008)

VIRGINIA

IN THE JUVENILE & DOMESTIC RELATIONS
GENERAL DISTRICT COURT
FOR ARLINGTON COUNTY

MICHAEL H. PFEIFFER,	)	
Petitioner,	)	
	)	
v.	)	Case No.
	)	J-31848-01
	)	
ARIEL R. KING,	)	
Respondent.	)	

IN RE: [Child's Name Omitted] KING-PFEIFFER
DOB: 05/07/2003

MOTION FOR LEAVE TO WITHDRAW APPEARANCE OF COUNSEL (filed on or about April 24, 2008)

Comes now counsel for the Respondent, Ariel R. King, pursuant to Rule 1:5 of the Rules of the Supreme Court of Virginia, and moves this Court for leave to withdraw from representation in the above-captioned cause and as reasons therefore states as follows:

1. The Respondent and her undersigned counsel have agreed to terminate their relationship.

2. Unless and until the Respondent is able to obtain new counsel, Respondent will represent herself pro se.

WHEREFORE, counsel respectfully requests this Court to grant them leave to withdraw from representation in this cause of action.

THYDEN GROSS AND CALLAHAN, LLP

By: _/s/_____
Michael F. Callahan, VSB No. 27508
4601 Willard Avenue
Chevy Chase, MD 20815
(301) 907-4580
(301) 907-4588 facsimile
Attorneys for Respondent

AGREED AND CONSENTED TO:

/s/

_____
Ariel R. King
Respondent

Circuit Court Case Information for Initial Filing of Petition for Writ of Mandamus, Filed April 25, 2008 Pro Se (Source: Circuit Court Online Docket)*

Arlington County Circuit - Civil Division
Case Details

Case Number: CL08000524-00
Filed: 04/25/08
Filing Type: Complaint
Number of Plaintiffs: 0001
Number of Defendants: 0001
Commenced By: Initial Filing
Bond:
Complex Case:

Plaintiffs
Plaintiff: KING, ARIEL R.; DR
Trading as:
Attorney: PRO SE

Defendants
Defendant: HONORABLE ESTHER WIGGINS LYLES
Trading as:
Attorney:

*Note: Dr. King refiled the Petition for Writ of Mandamus for Lack of Subject Matter Jurisdiction on May 15 before the Supreme Court of Virginia which had original jurisdiction, and then moved to dismiss this filing because of the other filing was then pending.

Psychological Praecipe Filed Before JDR Court on August 21, 2008

VI RGINIA:
IN THE JUVENILE & DOMESTIC RELATIONS
COURT FOR ARLINGTON COUNTY

DR. MICHAEL H. PFELFFER
Petitioner,

v.

DR. ARIEL R. KING
Respondent,

IN RE: [Child's Name Omitted]
DOB: *05/07/2003*
CASE NO. 1-31848-01

PRAECIPE

(filed August 21, 2008)

TO THE CLERK OF THE COURT:
Please note the following:

Pursuant to the February 8, 2008 Order where the Court ordered both the Father and the Mother to have a psychological examination, Dr. King, the Mother, completed said psychological examination with Susan Van Ost, Ph.D., Director, Assessments and Solutions a part of Jewish Social Services Agency (1SSA), Bethesda, Maryland,

Dr. Ariel King

Docketing Order for Appeal to Circuit Court Scheduling First Hearing Date of October 20, 2008

October 06, 2008

Michael H. Pfeiffer

Ariel R. King

In re: Ariana Leilani King-Pfeiffer

This is to advise you that this case is now set on the Term Day Docket for OCTOBER 20, 2008 at 10:00 A.M. in the Arlington County Circuit Court for the setting of a trial date. IT MAY NOT BE NECESSARY to appear at Term Day if you call Mary Carrig at (703) 228-7000 during business hours between the dates of OCTOBER 6, 2008 to OCTOBER 10, 2008 and OCTOBER 14, 2008 to OCTOBER *17*, 2008 with three (3) agreed (by ALL PARTIES) choices for trial dates. (Do Not Call on Friday). These dates *must* not be less than 5 months and not more than 8 months from Term Day. An extension in the setting of a trial date may be granted for good cause shown on Term Day or a Civil Motions Day.

If no one appears at term day or calls the Court as provided for, this case will be assigned a trial date chosen by the Court.

Clerk's Office
Circuit Court

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MOTION FILED

DEC 16 2009

No. 09-612

In the
Supreme Court of the United States

Ariel King,
Petitioner

v.

Michael Pfeiffer,
Respondent

On Petition for Writ of Certiorari to the
Supreme Court of the Commonwealth of Virginia

Amicus Curiae in Support of Petitioner

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No. _____

In the
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Ariel King,
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Michael Pfeiffer,
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On Petition for Writ of Certiorari to the
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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Amici respectfully move this Court for permission to file the following *Amicus Curiae* Brief. As required by Rule 37.2(b), consent of all parties was requested and notice was given at least 10 days prior (1 December 2009) to the due date of *amici curiae's* intention of filing this brief. Petitioner's counsel has consented to the filing of this brief, but Respondent has not responded.

The *Amici* represented herein have sufficient interest and good reason for presenting an *amicus* brief. *Amici* are four national and one California organization that work extensively on the issues in family courts especially those related to the violations of due process and equal protection alleged in this brief. Stop Family Violence has 24,000 members nationwide while Protective Mother's Alliance has chapters in 20 states. These problems are long standing and deeply rooted in family courts and these organizations have been working on the problems for more than 10 years with little result due in large part to failure to apply constitutional law in family courts.

Amici further submit that the facts presented in the brief will add relevant information and may be of considerable help and aid to the Court in its consideration of the constitutional issue. *Amici* have been directly and indirectly involved in much research and documentation of existing practices in family courts and can add valuable expertise. California Protective Parents alone has worked

with over 2,000 persons, and the Battered Mother's Custody Conference gathers national experts annually.

Therefore, Amici pray that the Court grant this motion for leave to file *Amicus Curiae* Brief.

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Interest of Amicus Curiae[1]

Stop Family Violence, is a national organization that works at the national, state and local level to ensure safety, justice, accountability and healing for people whose lives are affected by domestic violence, sexual violence or child abuse. Stop Family Violence has approximately 24,000 members nationwide, including survivors of family violence, anti-violence advocates from national, state and local anti-violence programs, and allied professionals. Stop Family Violence coordinates the Family Court Reform Coalition - a coalition of advocates, professionals and organizations formed in response to the national crisis in the custody court system, where all too often, judges order children to live with abusers and punish, silence, or jail the parent who tries to protect the children from harm. The FCRC's mission is to promote reform and accountability to ensure that victims of domestic violence and child abuse are protected from abuse in child custody determinations. Stop Family Violence hears from parents on a daily basis who are fighting to retain custody, or who have lost

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[1] Pursuant to Supreme Court Rule 37.6, counsel for amicus curiae represent that no counsel for a party authored this brief in whole or in part, and no counsel for a party or a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members or counsel made a monetary contribution to its preparation or submission. Pursuant to Supreme Court Rules 37.2(a) counsel of record for all parties were sent notice at least 10 days prior to the due date of the *amicus curiae*'s intention to file this brief.

child custody to abusers, often in gross violation of due process. Stop Family Violence is concerned about the nationwide failure of family courts to adhere to basic due process and to protect children from harm.

The Protective Mothers Alliance (PMA) is an organization made up primarily of mothers who have been punished by family law courts for their efforts to protect their children from abusive fathers post-separation. The organization also welcomes the participation of other women and men as allies. Our mission is to bring justice across the United States to mothers who have been battered or whose children have been abused by the father and who now have to confront the father in legal proceedings regarding custody or visitation.

PMA objectives are to expose the current miscarriages of justice that are taking place and to build public pressure on courts to make reforms. Specifically, we promote reforms that will make courts conduct themselves in fair and objective ways in custody proceedings involving reported risks to children, will hold courts accountable, and will require courts to protect children from suffering or witnessing abuse. In addition, we strive to prohibit the punishment of mothers for efforts to protect their children. The most common punishment currently is the transfer of custody of the children to the abusive father, but some mothers are also being fined or jailed.

We consider this issue to be of the utmost urgency. Not only are thousands of children per year being

endangered or harmed by such judicial actions, but countless additional children are being put at risk because their mothers become afraid to take steps to protect them once they learn that courts are retaliating against protective mothers.

The Protective Mothers Alliance currently has groups in over twenty states and in a number of other countries. We have grown exponentially in the last six months, and expect to have chapters in all fifty states in less than a year from now. It is the policy of our organization that protective mothers themselves are always to be in the key positions of leadership in our local chapters and in our national office.

The Protective Mothers Alliance is currently co-directed by Janice Levinson and Lundy Bancroft, with Ms. Levinson providing the primary leadership. The organization's telephone number is 941 822-5592.

The Battered Mothers Custody Conference is an annual national conference, held in Albany, New York, that promotes education, activism, advocacy, and dialogue among legal, policy, psychological, child protective workers, and other helping professionals with battered mothers from across the nation. The conference's sole focus is the serious injustices faced by battered women who seek protection for themselves and their children in this nation's family court/divorce court system.

California Protective Parents Association was created 10 years ago to address the problem of

family court judges removing children from safe protective parents (mostly mothers) and giving the children to identified physically and sexually abusive parents (mostly fathers). After assisting over 2,000 protective parents we have found that while our efforts have improved various laws and procedures the underlying problem persists. Not only have judges been misinformed through professional training to consistently disbelieve children's disclosures of physical or sexual abuse, a cottage industry of expensive court-ordered private court appointees has emerged to encourage this misinformation. It appears to be public policy in California family courts to place children with batterers and molesters.

The National Organization for Men Against Sexism is an activist organization of men and women supporting positive changes for men. It is a pro-feminist, gay affirmative, anti-racist organization enhancing men's lives. NOMAS seeks to take direction from the collective voices of women and to be allies of women in the work to end sexism, domestic violence and other forms of oppression against women.

SUMMARY OF ARGUMENT

Parenting is indisputably a fundamental constitutionally protected right for both the parent and the child. The fundamental right of parenting is frequently violated in state courts nationwide. This is a long standing and wide spread problem which *amici*, from their experience and expertise, can address. Equal protection, due process, and freedom of speech are all commonly violated constitutional rights in family courts stemming from discriminatory attitudes, unwarranted assumptions and incorrect interpretation and use of the law.

Courts improperly apply the domestic relations exception rule and the *Ex parte Burrus*, 136 U.S. 586, 10 S. Ct. 850, 34 L. Ed. 500 (1890) decision as the Virginia Supreme Court did here. While these cases are different from termination cases when the State is opposing a parent's right, the parents still have constitutional protections which the courts, as state actors, are obligated to uphold.

Some federal circuits have held that a litigant in the position of the petitioner should have been appointed counsel to uphold her Constitutional rights, while the WA Supreme Court has held the opposite.

ARGUMENT

A. Parenting is a fundamental, constitutionally protected right.

It is undisputed that parents have a constitutionally protected right to the care, custody and management of their children. *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923); *Stanley v. Illinois*, 405 U.S. 645 (1972); *Lassiter v. Department of Social Services*, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981); *Santosky, v. Kramer*, 455 U.S. 745, 770, 102 S.Ct. 1388, 1403-04, 71 L.Ed.2d 599 (1982); *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) (plurality opinion).

That right is an essential liberty interest protected by the Fourteenth Amendment's guarantee that parents and children will not be separated by the state without due process of law except in an emergency. *Stanley, supra.* The state's power to manage aspects of family law is subject to scrutiny by the federal judiciary under the Due Process and/or Equal Protection clauses of the Fourteenth Amendment. Fundamental personal rights protected by the Bill of Rights and pre-existing the Constitution are protected by the federal judiciary from overreaching by States. *Wise v. Bravo*, 666 F. 2d 1328, (10th Cir, 1981) Custody rights were not created by state law but were pre-existing and are a fundamental right under the Constitution that this court must protect. *Brittain v. Hansen*, 451 F. 3d 982 (9th Cir., 2006)

In fact, one court has recognized that the right to contact with your children may be more vital than the right to life, "As this court has observed, a parent's right to custody and control of his or her children is "'more precious to many people than the right of life itself." (*In re Welfare of Luscier*, 84 Wn.2d 135, 137, 524 P.2d 906 (1974))

B. The child has an equal right that is constitutionally protected.

The Fourteenth Amendment clearly covers the integrity of the family unit for the child as well as the parent. A child's Fourteenth Amendment right cannot be ignored because it is within a domestic dispute. *Wooley v. City of Baton Rouge*, 211 F. 3d 913 (5th Cir. 2000). The right is reciprocal and belongs to both equally. *Duchesne v. Sugarman*, 566 F.2d 817 (2nd Cir 1977); *Bennet v. Town of Riverhead*, 940 F.Supp. 481, 488-89 (E.D.N.Y. 1996); *Franz v. U.S.*, 707 F 2d 582 (DC Cir. 1982) Here King was the primary caretaker for the entire child's life and suddenly without warning or reason, the child is not allowed to see her mother. The constitutional rights of the child have been seriously abridged.

In fact King had taken her child for medical treatment and according to the Petition, reasonable cause existed to believe the father had injured the child.[2] A child also has a Fourteenth Amendment liberty interest in the right to personal safety.

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[2] See footnote 6 in writ of certiorari

Because of the court's failure to protect children, children have seen that their words do not count and their agony is unimportant. They have started their own support system called Courageous Kids Network [3] in an attempt to both support those who remain trapped in abuse and change the system.

C. Equal protection rights under the 14th Amendment are routinely violated in family courts.

The violation of constitutionally protected due process and equal protection as well as the fundamental right of parenting is a national tragedy that has gone unremediated for at least 30 years. Especially in situations as this petitioner, when there is proof of sexual abuse against the children, [4] the mother's rights and most importantly the children's protection are ignored.

Dr. Elizabeth Morgan illustrated this failure of the courts. "When I asked the U.S. courts to protect my child from sadistic abuse and incest I was jailed three times for no crime, the third time for more than two years. Judge after judge was enraged that I asked for justice. I am one of many mothers so misused. In the end my child, more fortunate than most, was protected, but never by a U.S. judge." [5]

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[3] Courageous Kids Network, www.courageouskids.net, accessed 30 November 2009.

[4] The Maryland court found probable cause that sexual abuse existed. See footnote 6 in petition for writ of certiorari.

[5] EXPOSE: The Failure of Family Courts to Protect Children from Abuse in Custody Disputes: A Resource Book for Lawmakers, Judges, Attorneys and Mental health

A new book includes chapters by over 25 of the leading experts in the U.S. and Canada including judges, lawyers, psychiatrists, psychologists, sociologists, journalists and domestic violence advocates. It provides up-to-date research that mistaken practices are overwhelmingly applied against mothers and comes to remarkable agreement that the family court system is broken creating a serious violation of equal protection.[6]

Several qualitative studies have been done to document this pattern of bias against mothers and the states failure to protect children. *Battered Mothers Speak Out*, a report published by the Battered Mothers Testimony Project (BMTP) at Wellesley College in November 2002 ([7]) documents the human rights violations battered women suffer when they fight against their abusers for custody of their children in the Massachusetts family courts. "Despite their diversity, the problems that they identified were remarkably similar. The courts fail to protect battered women and children by issuing child custody rulings that endanger them. Family courts give custody to batterers. Child abusers are given unsupervised visitation. Women and children are required by the courts to interact with their abusers with no protection."

Professionals, Our Children Our Future Charitable Foundation, Los Gatos, CA, 1999, p. 1.

[6] Maureen T Hannah, PHD, Barry Goldstein, co-editors, DOMESTIC VIOLENCE, ABUSE and CHILD CUSTODY: Legal Strategies and Policy Issues (Civic Research Institute, forthcoming February-2010)

[7] Wellesley Center for Women, Women's Rights Network, Wellesley College

The 1989 gender bias study commissioned by the Massachusetts Supreme Judicial Court found that fathers win three times more often than mothers in contested custody battles. The BMTP found that the Massachusetts Family Court system also violated the law by holding mothers to a higher parenting standard than fathers, treating women with disrespect and failing to hold batterers accountable for child support.

In an effort to replicate the Wellesley study in a different state, the Arizona Coalition Against Domestic Violence carried out a two-year study. [8] In that study, 86% of the participants reported discrimination based on gender, socioeconomic status, religion, language and race. A mother *pro se* was disadvantaged and many cases were decided *ex parte* as occurred in the instant case. In the same year, a study was released regarding the domestic relations division of the Philadelphia Family Court. [9] The findings included limited access to court, inadequate length of hearings so it was impossible to establish an adequate evidentiary basis, lack of appropriate translation, disrespect and lack of information, and gender and racial bias.

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[8] Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence, Arizona Coalition Against Domestic Violence, June 2003.

[9] Justice in the Domestic Relations Division of the Philadelphia Family Court: A Report to the Community, Women's Law Project, Philadelphia, Pa, April 2003.

These studies from such disparate states as well as national data are disturbingly similar. Documented domestic violence and child abuse is ignored, due process is violated, and discrimination is rampant in family courts.

As shown by the evidence, it is the norm in family courts that domestic violence and sexual abuse allegations are not taken seriously and the victims are not protected from further abuse. The national scope of the problem requires Supreme Court attention.

1. Equal protection is violated by gender bias in family courts.

Since the 1990's, the findings of the thirty-one state and five federal gender bias task forces are similar and disturbing. They report that its victims are overwhelmingly women, that male judges and lawyers of all ages are largely unaware of the experiences and perceptions of their female colleagues, and that the disrespect and devaluation experienced by white women is even more pronounced for women of color such as the plaintiff in this case.

The task forces also found that custody awards often punish women who breach the stereotype of the ideal mother, e.g. they work outside the home or have a sexual relationship outside of marriage. There is a growing tendency to award custody to the wealthier parent rather than to award child support. Given women's and men's unequal earning power, this constitutes a paternal preference.

Judges often refuse to listen to or believe allegations of abuse because of gender bias. The American Bar Association found that even in those few instances when allegations are untrue or unable to be proven "most sex abuse allegations in custody cases are made in good faith and are not the result of vindictiveness."[10] The Judicial Council of the California Advisory Committee found that few allegations of child sexual abuse are false and when they are the falsehood is usually not deliberate or malicious. [11] Yet such allegations trigger judges to apply stereotypes and to label women as hysterical or vindictive, emphasizing the lack of credibility the system affords women and children.

A woman's credibility is immediately suspect because the perception among judges is often that she is simply trying to gain advantage.[12] Her word is often doubted as soon as the allegation is raised. Such views of women are particularly apt to be held when fathers are professional people as in this case.[13] One authority said it is more in accord with

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[10] Karen Winner, Divorced From Justice: The Abuse of Women and Children by Divorce Lawyers and Judges 133 (1996).

[11]. Judicial Council of California Advisory Committee on Gender Bias in the Courts, Achieving Equal Justice for Women and Men in the California Courts (Final Report) 151 (1996) (hereinafter Report)

[12]Women's Credibility Doubted in Many Family Courts, Women's e-News (Sept 21, 2001), *at* http://www.canow.org/issues/famlaw_courts.html.

[13] Report, supra note 4, at 152, quoting Sandra Joan Morris, a certified family law specialist and past vice-president of the American Academy of Matrimonial Lawyers

our images of the world to regard a mother as "crazy or hysterical" rather than to recognize an otherwise seemingly rational and caring father as capable of the behaviors described.[14] Gender bias, along with class bias, permeates society at such a deep level that "rational, logical, professional" men are easily found more believable than "crazy, hysterical" mothers.

In fact, mothers are less likely than fathers to make false allegations. Twenty-one percent of father's allegations were shown to be false compared to only 1.3% of mothers. Gender bias is manifested by the failure to consider all the evidence especially evidence of violence against women and children. "It's very common for people to make recommendations in child protective cases and child custody litigation without ever looking at clinical evidence of child abuse, spouse abuse or trauma," says Robert A. Geffner, who directs the Institute on Violence, Abuse and Trauma in San Diego's Alliant International University. [15] In this case there was evidence of such violence by Pfeiffer's behavior at the embassy, the protection order and the finding of the Maryland court. Yet the Virginia court issued no evidentiary findings. Refusal to consider the evidence violates the best interest of the child (BIC)

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[14] Sandra Joan Morris, Sexually Abused Children of Divorce, 5 Journal of the American Academy of Matrimonial Lawyers (1989) at 35, citing Waterman et al. Sexual Abuse of Young Children 150 (1986), cited in Report, supra note 1, at 153.

[15] Custody Disputes Often Bypass Abuse Assessments, by Marie Tessier, WeNews correspondent, July 6, 2007

standard and denies the child's right to live free from violence.

Numerous scholars have commented on the tendency of family courts, and especially psychological evaluators, to respond to women's allegations of abuse or danger by labeling them in some way as mentally unstable or pathological. "Judges should be wary of much of the psychological evidence offered to assist a court in evaluating abuse allegations, which may ... cover up abuse and wrongly characterize the reporting parent with a pathological diagnosis. [16] The American Psychological Association's Presidential Task Force on Violence in the Family warns that women are often given inappropriate pathological labels.[17] Though the National Association of Juvenile and Family Court Judges Have said that psychological testing is not appropriate in domestic violence cases and it is the rare case where it would be useful, it is routinely used to the detriment of protective parents. [18] The U.S. Supreme Court

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[16] Rita Smith and Pamela Koukos, Fairness and Accuracy in Determination of Domestic Violence and Child Abuse in Custody Determinations, The Judges Journal, 38-56, 39, (1997).

[17] Report of the APA Presidential Task Force' Violence and the Family, Report of the APA Presidential Task Force (1996), available at http://web.archive.org/web/20050303175323/www.apa.org/pi/pii/familyvio/homepage.html

[18] Dalton, Drozd and Wong, Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judges Guide, for the State Justice Institute and National Association of Juvenile and Family Court Judges (2006)

prohibited such practice in *Schlagenhauf v. Holder*, 379 U.S. 104 (1964) because under Federal Rules of Procedure, Rule 35 the mental or physical condition of the party sought to be examined must be "in controversy" and "good cause" must be shown. This requirement cannot be met by mere conclusory allegations. Trial judges must use discriminating application demonstrating both "in controversy" and "good cause". *Amici* have found it common that the person who raises issues of abuse, usually female, is then required to have a psychological exam as in this case.

2. Equal protection is violated when victims of violence or sexual abuse are not allowed to present evidence because such violence disproportionately impacts women and children.

Domestic violence is a factor in 50-80% of divorce cases in the U.S., depending on the jurisdiction. [19] The victims of domestic violence are overwhelmingly (95%) women and children. [20] Therefore, wrongful practices in the family courts disproportionately impact women, especially battered women. In addition, a high correlation has been shown between spouse abuse, child abuse and incest [21] putting at risk the children of these battered women.

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[19] Divorce Mediation and Domestic Violence, Domestic Violence Report (Civic Research, Inc. Kingston, N.J., Oct/Nov. 1998), at 1.

[20] Jaffe, P.G, Wolfe, D., & Wilson, S., Children of Battered Women. Newbury Park, CA: Sage, 1990

[21] American Bar Association, Young Lawyer's Division, Center for Child Advocacy and Protection, *Legal Response: Child*

A series of studies from the National Institute of Justice [22] concluded that interpersonal violence (IPV) was ignored by the courts even with a documented, substantiated history and strong protections for the children were absent. [23] They found that contrary to popular thought, fathers restrained by orders of protection (OPs) were more likely to obtain visitation orders than not (64%). [24] Thus King's attempts to protect herself and her daughter by getting a protection order after his incident in the embassy only resulted in a higher likelihood that the child would not be protected, contrary to the intent of the law.

Women are also discriminated against in child kidnapping cases, as implicated here. According to studies commissioned by the Office of Juvenile Justice and Delinquency Prevention[25] mothers and

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Advocacy and Protection, No. 2, P. 1 (June-July 1979); Roy, A Current Study of 150 Cases, *Battered Women: A Psychological Study of Domestic Violence* (1979).

[22] National Institute of Justice Grant number 2000-WT-VT-0016, "History of Intimate Partner Violence and the Determination of Custody and Visitation among Couples Petitioning for Dissolution of Marriage" published in Violence Against Women, No. 11, Volume 8, Sage, 2005, p. 991, Children in the Crossfire.

[23] Child Custody Determinations among Couples with a History of Intimate Partner Violence, p. 991, Kenic, Monrary-Ernsdorff, Koepsell, Holt in Children in the Crossfire.

[24] Outcomes of Visitation and Custody Petitions when Fathers are Restrained by Protection Orders: The case of the New York City Family Courts, Rosen and Sullivan, National Institute of Justice Grant no 1998- IJ-CS-0021, secondary analysis of data, p. 1054.

[25] Janet R. Johnson, Inger Sagatun-Wedward, Martha-Elin Blomquist, and Linda K.Girdner, "Early Identification of Risk

fathers are equally likely to abduct children. Men were more likely than women to be arrested for abduction, but the women who were arrested for abduction were more likely than men to be convicted and incarcerated. King experienced this practice when she was convicted of kidnapping and the Virginia JDR judge issued an arrest warrant that effectively prevented her from participating further in Virginia.

Treating children and protective parents, often women, differently under a state law or practice because of their status as victims of domestic violence or treating the mother differently because of her gender violates their rights. The court cannot rely on archaic or stereotypical notions concerning the roles and abilities of males and females, mothers or fathers. The court must apply the same searching analysis regardless of whether the case involves family issues. *Mississippi University for Women v. Hogan*, 458 U.S. 718, 102 S.Ct. 3331, 3336-37, 73 L.Ed.2d 1090 (1982)

This case follows the pattern established by research across the nation that shows that women are treated differently and negatively in court and that children are not given the protection that is mandated under state statute and the constitution. The mother was treated differently from the father by not fairly testing the evidence of abuse, by *ex parte* procedures in favor of the father, by refusing

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Factors for Parental Abduction",<http://www.ncjrs org/html/ojjdp/2001_3_1/contents.htm.l>

to listen to evidence put forth by the mother, and by punishing not only her but the child for the mother's attempts to protect. This pattern and practice is gender discrimination in violation of equal protection.

D. Due process rights under the 14th Amendment are routinely violated in family courts. .

Due process is flexible and the procedural protections must meet what the particular situation demands. (*Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593,33 L. Ed 2d 484 (1972)) The private fundamental liberty interest involved in retaining custody of one's child and the integrity of one's family is of the greatest importance. *Santosky v. Kramer* and *Stanley v. Illinois supra.* When all contact with the child is cut off, as here, more than the mere availability of a procedural remedy is necessary. It is the state that has the burden to initiate appropriate proceedings to verify its actions. *Weller v. Dep't of Soc. Serv.*, 901 F. 2d 387 (4th Cir, 1990) But here, it is the state that has made those proceedings impossible. Furthermore when it is the state that removes the child from the jurisdiction, as here by taking the child from its parent in Maryland where it had residence to Virginia where it had been only for a short time during an emergency, it reduces the possibility of appropriate post-deprivation proceedings. *Weller*

Santosky made clear that the nature of the due process required is a balancing act between the private interests, the risk of error and the governmental interest. Here the private interest is

one of the weightiest involving ones own child. The risk of error is extremely high as it will have severe impact on not only the parent but the innocent child for generations to come. (*Weller supra)* The risk is grave and the states administrative or fiscal burden is of no importance in such a case. *Duchesne v. Sugarman, supra*

The minimum standard of proof balances the weight of the public and private interests and a societal judgment about the risk of error and how it should be distributed between the litigants. The child should never bear that risk as she is here by being prohibited from seeing her mother and primary caretaker. That minimum standard is a question of federal law that this Court must resolve. Case by case review does not preserve fundamental fairness when an entire class of proceedings i.e. family law is governed by a constitutionally defective evidentiary standard. *Santosky v. Kramer supra.*

Even the post-deprivation remedy offered to King was a violation of due process. *Weller supra* The court in *Weller* found that the complaint did allege a violation of procedural due process because his claim that his attempts at a post-deprivation remedy were stymied by the department and the procedure offered by the juvenile court would not have offered an appropriate remedy. Here the court made it impossible for King to access any post deprivation remedy by issuing an arrest warrant for her so that if she appeared to defend her rights, she would be arrested. Thus the "remedy" was not available and since this impossibility was created

by the court, it does not meet due process requirements. The liberty interest in King as in *Weller* i.e. custody of a child is of great import and appropriate remedies must be provided. Federal jurisdictions do not hesitate to resolve due process claims arising out of custody disputes when a constitutional claim is raised and the state law issues are not central to the claim. (*Weller)*

1.The failure to appoint counsel in family court cases is a violation of due process and a conflict exists between state and federal law.

Empirical studies have shown that indigent litigants without counsel receive less favorable outcomes than those with counsel. There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. *Griffin v. Illinois*, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956)

A Harvard law professor studied 900 families involved in custody proceedings. The study found that attorney-represented mothers were twice as likely as *pro se* mothers to be awarded full or joint custody when opposing fathers were represented by counsel.[26] A study in King County, Washington, found that shared parenting plans are as much as 42% more likely where both parties are represented

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[26] Robert H. Mnookin, Eleanor E. Maccoby, Catherine R Albiston & Charlene E. Depner, Private Ordering Revisited' What Custodial Arrangements are Parents Negotiating, in Divorce Reform at the Crossroads (Stephen D. Sugarman & Herma Hill Kay eds.,1990).

by counsel than in cases where one party appears *pro se*.[27] Other studies show similar disparity between parties represented by counsel and parties acting *pro se*.[28] Federal District Court Judge Robert W. Sweet observed that "every trial judge knows[] the task of determining the correct legal outcome is rendered almost impossible without effective counsel."[29].

State procedures must be fundamentally fair especially in cases dealing with constitutionally protected rights such as parenting. *Lassiter v. Dep't of Soc. Serv, supra* The fundamental fairness doctrine of the Due Process Clause requires that counsel be appointed for an indigent litigant when s/he may be deprived of physical liberty but that is not the end of the question. There are other elements of due process such as private interest at stake, governmental interest and the risk that the procedures used will lead to erroneous decisions. These must be weighed against the need for counsel.

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[27] Jane W. Ellis, Plans, Protections, and Professional Intervention: Innovations in Divorce Custody Reform and the Role of Legal Professionals, 24 U. Mich. J L. Reform 65, 132 (1990).

[28] Carroll Seron, Gregg Van Ryzin, Martin Frankel & Jean Kovath, The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court Results of a Randomized Experiment, 35 Law & Soc'y Rev 419, 428-29 (2001).

[29] Robert W. Sweet, Civil Gideon and Confidence in a Just Society, 17 Yale L. & Pol'y Rev. 503, 505 (1998)

When the parent's interests are strongest as in this case when the parent has lost complete contact with her child, the State's interests are weakest because there was no emergency. The risk of error is at its peak because to deprive the child of any contact with the person who had been its primary caretaker is a shocking harm. Under these conditions, due process would require appointment of counsel. King was the primary caretaker for the child's entire life until she was ripped away by the court in an *ex parte* proceeding without consideration of evidence that was necessary to protect the best interest of the child.

As in *Lassiter supra*, here the court has sought not to infringe the right of the parent to the child's companionship and vice versa, but has ended it completely, a unique kind of deprivation. (p. 27) The interest of King is a commanding one. Courts have generally held that the State must appoint counsel at termination proceedings. Most states do so even at dependency and neglect proceedings. While the King case was not in form a termination hearing, in substance it was with the effective termination of contact with her child. The legal questions are not simple but are complex jurisdictional and international questions. Few *pro se* litigants would be able to navigate through that system.

The Fourth Circuit takes the position that federal courts must be especially solicitous of civil rights plaintiffs especially those who are *pro se*. *Harrison v. U.S. Postal Service*, 840 F. 2d 1149 (4th Cir. 1988) Technical pleading errors should not defeat a claim of constitutional violations. Instead, courts should

treat *pro se* litigants with "special judicial solicitude", (*Weller supra).* However in this case, King was treated worse than an attorney would have been by having her mailing to the Virginia Court of Appeals refused because it was sent through a different mailing system though it was dated and arrived timely. In fact, the mailing service used by Dr. King ("USPS Priority Mail") is one of the two forms of mailing service that qualify for service of a filing on the U.S. Supreme Court. (U.S. Supreme Court Rule 29) *In Roe v. Borup*, 500 F. Supp 127 (E.D. Wisc. 1980) the culprit was an attorney who filed a claim using fictitious names after the permission to do so had expired. Opposing counsel sought dismissal but the court said a minor procedural error should not result in such a drastic remedy as dismissal. More so in this case with a *pro se* litigant and an important issue, a minor error that had no impact on the timely filing of the appeal should not result in dismissal.

The court in *Harrison supra* also found that the court must advise a *pro se* litigant of her rights and if there is a colorable claim but the *pro se* litigant does not have the capacity to present it, the court should appoint counsel. *Gordon v. Leeke*, 574 F. 2d 1147 (4th Cir, 1978) Claimants in family court cases have no lesser right. Yet the Washington Supreme Court found otherwise in *King v. King*, 174 P. 3d 659, 162 Wn. 2d 378 (2007). The question was whether an indigent mother was entitled to appointment of counsel during a custody trial. The court held that while termination and dependency proceedings implicated fundamental rights that required appointment of counsel, family court cases

did not. (¶14) They claimed that the difference was the outcome i.e. distribution of parental rights rather than termination. But in many cases, including the instant case, termination of parental rights is in fact the result of a family court case. When dealing with the fundamental right of parenting, a closer analysis that looks at the violation of the fundamental rights in question must be required. The Washington court stated that divorce is a private matter but in fact marriage and divorce are state created institutions to serve state interests. Further, under the BIC standard, a state can overrule decisions agreed upon by both parents if the judge thinks best. The state cannot declare an entire class of cases, family law, off limits to constitutional analysis and protection of fundamental rights.

Yet battered women are often at an extreme financial disadvantage in hiring attorneys. Though the battered woman faces potentially the greatest loss in her life, her children, she often lacks formal education, she must present her version of disputed facts, she must match wits with adverse lawyers, counselors, psychologists; she must cross-examine witnesses (often expert) under rules of evidence and procedures of which she knows nothing; she must deal with introducing documentary evidence she may not understand and this all must be done under the strange and stressful setting of the court. Failure to appoint counsel renders the Constitutional protections meaningless and makes a mockery of the Rule of Law.

2. Courts improperly apply the domestic relations exception to deny litigants access to court.

Courts often refuse to accept appeals in family relations cases because of an incorrect application of the domestic relations exception. The domestic relations exception, according to *Ankenbrandt v. Richards*, 504 U.S. 689, 112 S. Ct. 2206, 119 L. Ed. 468 (1992) specifically encompasses only cases involving the issuance of a divorce, alimony or child custody decree. Even that rule has not been iron clad. The Court has taken a case directly related to a state child custody order because it raised important federal issues. *Palmore v. Sidoti*, 466 U.S. 429, 104 S. Ct. 1879, 80 L. Ed. 2d 421 (1964). However, courts often misconstrue the domestic relations exception and reject all cases even those grounded in constitutional violations. Thus plaintiffs are denied their opportunity to vindicate their constitutional rights.

Ex parte Burrus, 136 U.S. 586, 10 S. Ct. 850, 34 L. Ed. 500 (1890) is still cited to claim that the custody of a child by the parent does not arise under the Constitution, laws or treaties of the United States; therefore no jurisdiction arises in federal courts. However, since the decision in *Meyers v. Nebraska supra* in 1923, parenting has been held to be a fundamental right under the Constitution entitled to federal protection. As recently as 2007, (*Holmes v. Copeland,* 965 So. 2d 662 (Supreme Ct. of Mississippi, 2007)) the court relied incorrectly on *Burris* when the case had nothing to do with divorce or custody.

Inappropriate application of *Burrus* occurs regularly and needs to be halted.

The domestic relations exception is not applicable to this case because the question is a constitutional one and the problem affects a large number of people. *Sosna v. Iowa*, 419 U.S. 393, 95 Sc. Ct. 553, 42 L. Ed. 2d 532, 1975. This problem is widespread, long lasting and deeply rooted in the family court system.

3. Denial of access for family cases is state action for which the supervisory authority of the Supreme Court should be exercised.

Because divorce actions are between the parents and not the state, courts often fail to protect constitutional rights because they view the dispute as between two private parties, therefore, not implicating state action. However, to determine what is "state action", the constitutional doctrine requires an inquiry into the private party's behavior and whether it was instigated by or dependent upon the exercise of governmental authority sufficiently to make it state action. *Franz v. U.S., supra.*

In the instant case, the state has issued a *capias* order and imposed conditions of effective parental termination. As in *Franz*, without the intervention of the court, via both the custody order conditions that could only be removed by the state and *capias* orders imposing arrest and imprisonment, King would have had access to court, access to remedies and contact with the child. With the aid of the

court, the father has denied her these rights. As in *Franz*, such a strong contribution to the ability of one party to infringe the legal interests of another may be sufficient to give rise to "state action". The state has, as in *Franz*, created the situation by its arrest warrants that prohibit King from even appearing to defend her rights in Virginia.

In *Hurd v. Hodge*, 334 U.S. 24, 68 S. Ct. 847, 92 L. Ed. 1187 (1948) the court looked at the validity of court enforcements of restrictive covenants under the due process clause of the Fifth Amendment. While the court held the covenants unlawful under the Civil Rights Act, they said that even in the absence of the statute, other considerations would make the covenants contrary to public policy of the U.S. and that the Court should use its supervisory powers. Private agreements are subject to federal court intervention when such agreements are in violation of public policy of the United States as manifested in the Constitution. When a state court takes actions that violate the provisions of the Fourteenth Amendment, federal courts cannot uphold those actions because public policy must be equally concerned with the protection of basic fundamental rights whether violated by state or federal entities.

In the companion case, *Shelley v. Kraemer*, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed 1161, (1948), the court held that the Fourteenth Amendment also forbids discrimination when imposed by state courts. The question is not the validity of private agreements but the judicial enforcement of those agreements. It is the action of the state courts that

is in question, not any dispute between private parties. The action of the state courts has long been regarded as State action within the meaning of the Fourteenth Amendment. *Shelley supra* The restrictions on judicial action are not just procedural but whenever there is a denial of rights guaranteed under the Fourteenth Amendment regardless of the procedure used. Federal courts cannot be seen to allow state courts to violate federal law with impunity. Today that is the situation for thousands of parents across this land. The instant case is not a case where the parents of a child are fighting among themselves and the state does well to stay out of it. Like *Shelley v. Kramer*, this is a case where the state has brought to bear its full coercive power, including threat of arrest, to deny petitioner any contact with her child. "And when the effect of that action is to deny rights subject to the protection of the Fourteenth Amendment, it is the obligation of this Court to enforce constitutional commands." (page 20) *Amici* ask that the Supreme Court do so.

CONCLUSION

Gender bias in the courts and multiple violations of due process ensure that a victim of violence has a scant change of finding justice in court. Women are at a severe disadvantage because of the financial inability to hire attorneys and because of stereotyping by judges and other court actors. When they do seek to enforce their rights, higher courts refuse their pleas erroneously relying on the domestic relations exception. Fundamental fairness under the Rule of Law requires that the

law be applied equally to all and that those impacted have a fair opportunity to seek redress. That does not happen today in family courts and *amici* ask that the Court accept the *writ of certiorari* to address these vital issues for the future of our children.

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